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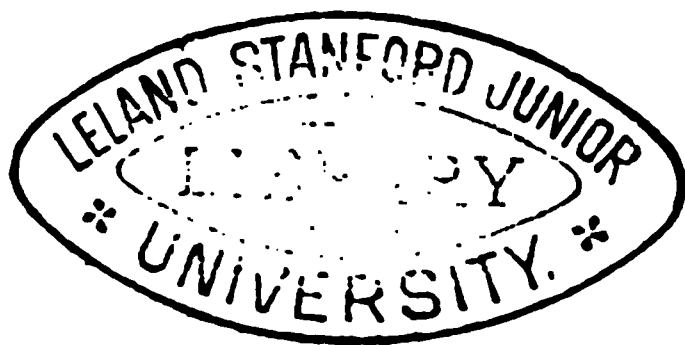
A REVIEW DEVOTED TO THE HISTORICAL STATISTICAL
AND COMPARATIVE STUDY OF POLITICS
ECONOMICS AND PUBLIC LAW

• • •
EDITED BY
THE UNIVERSITY FACULTY OF POLITICAL SCIENCE
OF COLUMBIA COLLEGE

VOLUME TENTH

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CONTENTS

LEADING ARTICLES.

	PAGE
Municipal Home Rule. <i>F. J. Goodnow</i>	I
Workingmen's Dwellings in London. <i>Edward Porritt</i> .	22
The Law of Population Restated. <i>S. N. Patten</i> . . .	44
Legislation against Futures. <i>H. C. Emery</i>	62
Chicago's Electric-Lighting Plant. <i>W. J. Meyers</i> . . .	87
Kossuth, the Revolutionist. I. <i>J. B. Moore</i>	95
Anglo-Saxon Courts of Law. <i>Frank Zinkeisen</i>	132
The Modern Use of Injunctions. <i>F. J. Stimson</i>	189
Static and Dynamic Sociology. <i>L. F. Ward</i>	203
Colonial and State Income Taxes. <i>E. R. A. Seligman</i> .	221
Is the Senate Unfairly Constituted? <i>S. E. Moffett</i> . .	248
Kossuth, the Revolutionist. II. <i>J. B. Moore</i>	257
State, Sovereignty, Government. <i>C. M. Platt</i>	292
The Gold Standard in Recent Theory. <i>J. B. Clark</i> . . .	389
Ideal of the American Commonwealth. <i>J. W. Burgess</i> .	404
Pennsylvania's First Constitution. <i>P. L. Ford</i>	426
The Tennis Court Oath. <i>J. H. Robinson</i>	460
The Study of Statistics. <i>R. Mayo-Smith</i>	475
Labor and Politics in England. <i>James Mavor</i>	486
A Retrospect	565
The Late Bond-Syndicate Contract. <i>A. D. Noyes</i> . . .	573
Decrease of Interstate Migration. <i>W. F. Willcox</i> . . .	603
Liquor Legislation in England. <i>Edward Porritt</i> . . .	615
Geography and Sociology. <i>W. Z. Ripley</i>	636
The German Emperor. <i>Richard Hudson</i>	656
Four German Jurists. I. <i>Munroe Smith</i>	664
Record of Political Events. <i>Wm. A. Dunning</i> .	362, 737

PUBLICATIONS NOTICED IN REVIEWS AND BOOK NOTES

	PAGE
American Historical Review. <i>H. L. O.</i>	734
AMES, J. G. Index of the Publications of the United States Government, 1889-1893	557
ANDREWS, E. B. Wealth and Moral Law. <i>J. G. Brooks</i> . . .	347
ANDREWS, NEIL. The Nominating Convention in Rhode Island	182
APPLETON, HENRI. Effets des Annexions des Territoires sur les Dettes	557
ARMINJON, P. Administration Locale de l'Angleterre. <i>F. J. G.</i>	711
BALDWIN, S. E. The Three Constitutions of Connecticut . .	181
BARCLAY, THOMAS, Selections from the Correspondence of. Edited by G. L. RIVES. <i>J. B. M.</i>	178
BENOIST. La Politique	184
— See Vie Nationale.	
BEVAN, W. L. Sir William Petty. <i>C. H. Hull</i>	334
BILLINGS, J. S. Vital Statistics of New York City and Brooklyn	562
BLUM, HANS. Das Deutsche Reich zur Zeit Bismarcks . . .	559
BOISSEVAIN, G. M. La Question Monétaire. <i>J. B. Clark</i> . .	729
BONAR, JAMES. See SMITH.	
BOOTH, C. [Editor]. Life and Labour of the People. Vols. V and VI. <i>R. M.-S.</i>	727
BORGEAUD, CHARLES. Adoption and Amendment of Constitutions. Translated by HAZEN	558
BOSANQUET, BERNARD [Editor]. Aspects of the Social Problem. <i>J. F. Crowell</i>	539
BRIDEL, LOUIS. Le Droit de la Femme Mariée sur le Produit de son Travail	563
— Le Mouvement Féministe et le Droit des Femmes . .	563
BROOKS. See GILBERT.	
BRYCE, JAMES. The American Commonwealth (3d edition, 1895). <i>W. P. Trent</i>	705
BURKE, U. R. A History of Spain. <i>E. G. Bourne</i>	700
CARROLL, EDWARD, JR. Principles and Practice of Finance. <i>Max West</i>	730
CARUS, PAUL. The Nature of the State. <i>W. A. D.</i>	162
CAUWÈS, PAUL. Cours d'Économie Politique (3d edition) . .	186
Census, Compendium of the Eleventh. Part II	561
— of England and Wales (Vol. IV, General Report) . . .	561
CONDER, EDWARD, JR. Records of the Hole Craft and Fellowship of Masons	184
CONTENTO, ALDO. La Teoria del Salario. <i>F. W. Taussig</i> .	338
CUNNINGHAM, REV. W. and MCARTHUR, ELLEN A. Outlines of English Industrial History. <i>C. M. Andrews</i>	523
CURRY, J. L. M. The Southern States	182
DAVENPORT, FRANCES G. Materials for English Manorial and Agrarian History	184

	PAGE
DOANE, W. C., Extracts from the Addresses of	564
DOUGLAS, JAMES. Canadian Independence	187
DRAGE, GEOFFREY. The Unemployed. <i>A. C. Hall</i>	328
DRUMMOND, HENRY. The Ascent of Man. <i>Max West</i>	343
EMERTON, E. Mediæval Europe. <i>G. L. Beer</i>	698
Essays introductory to the Study of the English Constitution. Edited by WAKEMAN AND HASSALL	183
FAUCHILLE, PAUL. La Diplomatie Française et la Ligue des Neutres de 1780. <i>J. B. M.</i>	701
Federalist, The, and other Constitutional Papers. Edited by E. H. SCOTT	181
FEDERICI, R. Lois du Progrès déduites des Phénomènes Naturels	187
FETTER, FRANK. Versuch einer Bevölkerungslehre. <i>R. M.-S.</i>	531
FLACH, JACQUES. Origines de l'Ancienne France. Vol. II. <i>W. J. Ashley</i>	518
FLINT, ROBERT. History of the Philosophy of History. <i>H. L. O.</i>	167
FRANÇOIS, GUSTAVE. Le Commerce	184
GILBERT, GUSTAV. Constitutional Antiquities of Sparta and Athens. Translated by BROOKS and NICKLIN. <i>C. H.</i> <i>Young</i>	702
GINNELL, LAURENCE. The Brehon Laws	559
GREEN, T. H. Principles of Political Obligation. <i>W. J.</i> <i>Eckoff.</i>	715
GUIRAUD, PAUL. La Propriété Foncière en Grèce. <i>W. J.</i> <i>Ashley</i>	731
HALLE, E. VON. Trusts in the United States. <i>J. W. Jenks</i> .	332
HAMMOND, B. E. Political Institutions of the Ancient Greeks. <i>C. H. Young</i>	702
HANCKE, E. <i>Bodin.</i>	188
HARRISON, FREDERIC. Meaning of History. <i>H. M. Stephens</i>	352
HASSALL. See Essays.	
HAY. See LINCOLN.	
HAZEN, C. D. See BORGEAUD.	
HERRON, G. D. The Christian State	563
HINDS, A. B. Making of England	558
HOBSON, J. A. Evolution of Modern Capitalism. <i>George</i> <i>Gunton</i>	324
HOFFMAN, F. S. The Sphere of the State. <i>W. A. D.</i>	162
INGRAM, J. K. History of Slavery and Serfdom	562
JEANS, J. S. Trusts, Pools and Combinations. <i>E. von Halle</i>	150
JONES, BENJAMIN. Coöperative Production. <i>J. G. Brooks</i> .	535
Kartelle, Ueber Wirthschaftliche, in Deutschland u. im Auslande	186
KING, BOLTON. See MAZZINI.	
KITSON, A. The Money Question. <i>H. C. Emery</i>	732
KOVALEVSKY, MAXIME. Évolution de la Famille et de la Propriété	186

CONTENTS.

vii

	PAGE
LANGLOIS, CH.-V. and STEIN, H. Archives de l'Histoire de France	184
LAUGHTON, J. K. [Editor]. State Papers relating to the Spanish Armada. <i>W. F. Tilton</i>	358
LAYCOCK, F. M. Economics and Socialism. <i>J. B. Clark</i>	723
LESSER, M. A. The Jury System. <i>M. S.</i>	355
LEVASSEUR, E. Agriculture aux États-Unis. <i>H. C. Emery</i>	528
LIESSE. See Vie Nationale.	
LINCOLN, A. Complete Works. Edited by NICOLAY and HAY.	558
LLOYD, H. D. Wealth against Commonwealth.	185
LORIA, A. Problemi Sociali Contemporanei. <i>F. W. Taussig.</i>	537
MCARTHUR, ELLEN A. See CUNNINGHAM.	
MACCUNN, JOHN. Ethics of Citizenship. <i>W. A. D.</i>	162
MADISON, JAMES. Journal of the Federal Convention	181
MAZZINI, JOSEPH. Essays. Translated by T. OKEY. Edited by BOLTON KING	558
MEDLEY, D. J. English Constitutional History. <i>H. L. O.</i>	696
MOORE, J. W. The American Congress. <i>A. C. McLaughlin</i>	708
NICKLIN. See GILBERT.	
NICOLAY. See LINCOLN.	
NICOLE, JULES. Livre du Préfet	564
NITTI, F. S. La Popolazione e il Sistema Sociale. <i>A. T. Hadley</i>	149
NYS, ERNEST. Origines du Droit International. <i>J. B. M.</i>	735
OKEY, T. See MAZZINI.	
OTKEN, C. H. Ills of the South	183
OTT, A. Traité d'Économie Sociale. <i>Edward Cummings</i>	340
PAEPE, P. DE. Compétence Civile à l'égard des États Étrangers. <i>J. B. M.</i>	713
PEARSON, C. H. National Life and Character. <i>F. H. G.</i>	160
PIKE, L. O. Constitutional History of the House of Lords. <i>Charles Gross</i>	552
PÖHLMANN, R. Geschichte des Antiken Kommunismus und Socialismus. <i>H. H. Powers</i>	156
PORRITT, EDWARD. The Englishman at Home. <i>F. J. G.</i>	171
Prices, Movement of, 1840-1894. Compiled by Bureau of Statistics, Washington	561
PROTHERO, G. W. [Editor]. Select Statutes. <i>G. M. Wrong</i>	554
RAE, JOHN. Eight Hours for Work. <i>George Gunton</i>	152
RAUCHBERG, DR. H. Die Bevölkerung Oesterreichs. <i>R. M.-S.</i>	531
Registrar-General of Ireland, Supplement to the Twenty-seventh Report of the	562
RICCA SALERNO, G. Teoria del Valore. <i>Ugo Rabbeno.</i>	718
RITCHIE, D. G. Natural Rights. <i>W. A. D.</i>	545
RIVES, G. L. See BARCLAY.	
ROOSEVELT, THEODORE. Gouverneur Morris. <i>W. A. D.</i>	348
ROSE, J. H. Revolutionary and Napoleonic Era, 1789-1815. <i>C. E. Chadsey</i>	175

	PAGE
ROUND, J. H. Feudal England. <i>C. M. Andrews</i>	693
RUSSELL, I. F. Outline Study of Law. <i>M. S.</i>	548
SCOTT, E. H. See Federalist.	
SCRUGGS, W. L. British Aggressions in Venezuela	181
SEELYE, J. H. Citizenship	562
SHARPE, R. R. London and the Kingdom. <i>Charles Gross</i>	350
SHAW, ALBERT. Municipal Government in Great Britain. <i>F. J. G.</i>	171
SMITH, ADAM. Catalogue of the Library of. Edited by JAMES BONAR	185
SNOW, FREEMAN. Cases and Opinions on International Law. <i>J. B. M.</i>	169
— Treaties and Topics in American Diplomacy. <i>J. B. M.</i>	169
SPERBER, O. VON. Die Socialpolitischen Ideen Alexander Herzens. <i>I. A. Hourwich</i>	525
Statisches Jahrbuch für das Deutsche Reich. Sechzehnter Jahrgang (1895)	560
STEIN, H. See LANGLOIS.	
STEPHENS, H. M. Europe, 1789–1815. <i>C. E. Chadsey</i>	175
STICKNEY, CHARLES. Know-Nothingism in Rhode Island	182
THAYER, J. B. Cases on Constitutional Law. <i>J. W. B.</i>	547
THÉRY, EDMOND. Grandes Compagnies de Chemins de Fer Français	186
TRAILL, H. D. [Editor]. Social England. Vol. II. <i>W. J.</i> <i>Ashley.</i>	344
Unemployed, British Board of Trade Report on Agencies and Methods for Dealing with. <i>A. C. Hall</i>	328
— Report of Massachusetts Board on the. <i>J. F. Crowell.</i>	724
VAUTHIER, M. Gouvernement Locale de l'Angleterre. <i>F. J. G.</i>	711
Vie Nationale. Edited by BENOIST and LIESSE	184
Vital Statistics of the New England States for the year 1892, summary of	560
WAKEMAN. See Essays.	
WALTERSHAUSEN, A. S. VON. Arbeitsverfassung der Englischen Kolonien in Nordamerika. <i>L. M. Keasbey</i>	155
WARNER, A. G. American Charities. <i>J. F. Crowell</i>	542
WEBB, SIDNEY AND BEATRICE. History of Trade-Unionism. <i>E. R. A. S.</i>	145
WESTLAKE, JOHN. Chapters on the Principles of Inter- national Law. <i>J. B. M.</i>	550
WINSOR, JUSTIN. Cartier to Frontenac	188
WOLSELEY, GENERAL VISCOUNT. Life of the Duke of Marl- borough	183
WOOLLEY, MARY E. History of the Colonial Post-Office	182
WRIGHT, C. D. The Slums of Great Cities. <i>R. M.-S.</i>	531

POLITICAL SCIENCE QUARTERLY.

MUNICIPAL HOME RULE.

¹ NO principle of law is more firmly established than that municipal corporations are the creatures of the legislature, which may enlarge, abridge or entirely withdraw their powers in its own discretion.¹ / With the single exception that municipal property owned by the corporation in its own right may not be taken from it, the legislature has, by common law, absolute power over municipal affairs./ While the early constitutions of nearly all the commonwealths contained bills of private rights, municipal corporations were considered as so completely governmental in character that they could not safely be protected against legislative interference, except in so far as such protection was afforded to them as owners of private property. ¶ The existence of such a rule of law makes it possible for the legislature to exercise control not only over such of the functions discharged by the city as interest the state as a whole, but also over matters of a purely local and *quasi* private character.¶ That the legislature has, as a matter of fact, controlled both these fields, needs no demonstration. In some of our commonwealths its attitude has been more worthy of censure than in others ; but in all alike it has failed to distinguish between matters of a public character, in which its interference is justified, and matters of a private character, which should belong within the realm of municipal local autonomy.

¹ *Meriwether vs. Garrett*, 102 U. S., 472-511 ; *Rogers vs. Burlington*, 3 Wallace, 654.

The attitude of the legislature toward municipal corporations is, however, very largely excusable, and for several reasons. In the first place, under a system of constitutional law which relies upon a written constitution and its maintenance through the courts, rather than upon the wisdom of the legislature, for the protection of the sphere of individual freedom, the legislature is liable to throw off the responsibility for its action upon the courts; and the habit thus formed with regard to ordinary private rights becomes extremely disastrous when applied to legal persons like municipal corporations, which are not, like natural persons, protected by the constitution.¹ In the second place, the fact that many functions of central concern are discharged by municipal corporations or by their officers, makes it absolutely necessary for the legislature at times directly to interfere in the administration of city affairs, so far as they involve matters which affect the state as a whole. The habit of interference is then insensibly extended to matters which do not at all affect the central government of the state or the interests of the community at large.

This — from the scientific point of view — unwarranted extension of the legislature's control is further a natural result of the rule that has been almost universally adopted as to municipal powers. No better or more authoritative statement of this rule can be found than that given by Judge Dillon and approved by many of the latest judicial decisions :

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others. First, those granted in express words. Second, those necessarily or fairly implied in or incident to the powers expressly granted. Third, those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. Any fair reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.²

The necessary result of such a rule of law, with the accompanying strict construction which is usually adopted,² is that

¹ Dillon, *Municipal Corporations*, fourth edition, p. 145

² *Ibid.*, 148.

ington it is further provided that cities of a certain size shall have the right to frame their own charters.¹

This method of securing to these *quasi*-public persons called municipal corporations their sphere of individual liberty and freedom of action has the usual disadvantage of drastic remedies : it is liable to produce greater evils than those which it was intended to remove. Thus, there is usually in a state at least one city whose institutions, resulting from its situation, are so peculiar as to render almost impossible the application to it of a rule which may be applied with advantage to the cities of the state as a whole. The dangers of the Procrustean procedure necessary in such cases are, it is true, avoided in a measure by the method adopted in Missouri, California and Washington, where cities of a certain size have the power to frame their own charters ; and such dangers completely disappear under the system of securing municipal home rule adopted in the recent constitution of New York, which provides for a suspensive veto, to be exercised, after a public hearing, by the municipal authorities of the city affected, upon all special legislation relating to municipal property, affairs or government.² But in all these cases of constitutional restriction we are confronted by an extremely important and perplexing legal problem. Before any restriction has been inserted in the constitution, the question as to the limits of the sphere of municipal activity is a question largely of academic interest ; but just so soon as such a restriction becomes a provision of the positive law, the determination of the sphere of municipal activity which is to be protected against encroachments by the legislature becomes a problem of supreme legal importance ; for upon its solution depends the constitutionality of many acts of the legislature relative to municipal competence.

The most important provisions contained in the commonwealth constitutions relative to the power of the legislature to create and regulate municipal corporations are of two kinds :

¹ See Oberholtzer, "Municipal Home Rule," in the *Annals of the American Academy of Political and Social Science*, III, 736.

² New York constitution, art. xii, sec. 2.

First, those which forbid the legislature to grant corporate powers by special act ; second, those which forbid the legislature to pass special acts regulating "county, city or town affairs" or the "internal affairs of counties, cities or towns," or which assure to municipalities the right to elect their own officers. Often we find at the same time a positive injunction laid upon the legislature to provide for the incorporation of cities by general law.

These constitutional provisions do not, indeed, attempt so much to limit the regulative power of the legislature over municipal corporations as to insist upon the exercise of this power in a particular manner. At the same time, they tend indirectly to strengthen the position of municipal corporations over against the legislature ; for the prohibition of special laws often prevents the legislature from interfering in matters of purely local concern affecting some particular municipal corporation, and obliges it to delegate much greater powers than it otherwise would delegate to local bodies. The exact degree of limitation upon the power of the legislature over the localities that results from these constitutional provisions can be determined only by the answers to two questions : First, what is a special act under the constitution ? and second, what are the corporate powers which may not be conferred by special act, or what are the "affairs" or the "internal affairs" of the corporation which may not be regulated by special act ?

I. *What is a Special Act ?*

The recent constitution of New York is almost the only one which specifically defines a special act. 'Such an act is said to be one which affects less than all the cities of one of the classes of cities for which the constitution provides.' In the other commonwealths the answer to the question is left to the courts in their construction of the constitution.

It is to be noticed here, in the first place, that the courts do not hold themselves precluded from investigating facts by the passage of an act which is general in form, but which is actually special in its application. The Illinois constitution

forbids the legislature to pass special laws regulating county and township affairs. In the case of *Devine vs. Cook County*,¹ it was held that an act applying to counties of over one hundred thousand inhabitants whose purpose was to erect a court-house, jail and other public buildings, and to fund the floating debt of the county — the act referring to the recent destruction of such buildings by fire — was unconstitutional. In this case the duration of the law was for six years, and the court in giving its opinion said:

Its very terms preclude it from having any application to any county except the County of Cook; for we take judicial notice no other county in this state contains over one hundred thousand inhabitants, nor can it be expected by any ordinary influx or increase of population, that any other county will have that population within the brief period fixed for the duration of this law, namely, within a period of six years from the time the act should take effect.

While this case is one of the few which expressly lay down the principle that the courts will take judicial notice of the facts surrounding the act, almost all the decisions which the courts have been called upon to make in the construction of similar constitutional provisions are really based upon this principle.

On the other hand, the courts do not attempt to prevent the legislature from classifying municipal corporations. It is explicitly declared in many cases that, notwithstanding the existence of a constitutional provision prohibiting special acts, the legislature may still classify municipal corporations, since it is practically impossible to pass one general law which can be applied with advantage to all the municipalities of the state. And further, provided the method of classifying is proper, the courts regard as constitutional a classification which may, at the time it is made, place only one individual in a class.² They insist, however, that the classification shall be based upon the varying necessities of the different municipal corporations

¹ 84 Illinois, 590.

² In some cases the constitution itself provides explicitly for a classification of cities, and fixes the number of classes — generally four.

clearly a class by themselves, and upon the whole of this class this law operates equally by force of terms which are restricted to no locality. A law so framed is not a special or local, but a general law, without regard to the consideration that within the state there happens to be but one individual of the class or one place where it produces effects.

Population also has been held to be a proper basis of classification, even if through its application only one individual is to be found in the class at the time it is made. Thus it has been held that a law putting cities of over three hundred thousand inhabitants in a single class was perfectly constitutional, although only one city in the state was in the class; and the court said, in rendering its opinion:

Legislation is intended not only to meet the wants of the present, but to provide for the future; it deals not with the past, but in theory at least anticipates the needs of a state healthy with a vigorous development. It is intended to be permanent. At no distant day Pittsburgh will probably become a city of the first class. . . . In the meantime, is the classification as to cities of the first class bad because Philadelphia is the only one of the class? We think not. Classification does not depend upon numbers. The first man, Adam, was as distinctly a class when the breath of life was breathed into him as at any subsequent period. The word is used not to designate numbers, but the rank or order of persons or things, in society it is used to indicate equality or persons distinguished by common characteristics, as, the trading classes, the laboring classes; in science it is a division or arrangement containing subordinate divisions of order, genus or species.¹

The courts do not, however, sustain a legislative classification that is designed to operate only in the present and on an existing state of facts, but not in the future. Thus, where the constitution provides that the legislature shall not pass local or special laws regulating the affairs of counties and cities, it has been held that an act providing for the establishment at once of a reform school in every county having a city

¹ Judge Paxson, who renders the opinion of the court, says that if the classification of cities is not regarded as constitutional, certain cities will be deprived of all means of development. *Wheeler vs. Philadelphia*, 77 Pa. St., 338. See also *State vs. Pugh*, 43 Ohio St., 98.

improper under constitutional provisions prohibiting special legislation. The ground here is that geographical conditions are permanent, and that accordingly any act which at the beginning of its application is special in character must always remain so, and is, therefore, unconstitutional. The strongest case upon this point is that of the Commonwealth *vs.* Patton.¹ This case arose under an act which provided

that in all counties of this commonwealth where there is a population of more than sixty thousand inhabitants and in which there shall be any city incorporated at the time of the passage of this act, with a population exceeding eight thousand inhabitants, situated at a distance from the county seat of more than twenty-seven miles by the usually travelled public road; it shall be the duty of the president judge and of the additional law judge, or either, to make an order providing for the holding of one week of court after each regular term of court for said county for the trial of civil and criminal cases in said city.

In refusing an application for a *mandamus* to compel the commissioners of the county affected by the act to provide suitable buildings for the courts, it was held that the act was contrary to a constitutional provision forbidding the legislature to pass any special or local law regulating the affairs of counties and townships. In delivering the opinion of the court Chief Justice Paxson said:

This is a classification run mad. Why not say all counties named Crawford, with a population exceeding sixty thousand inhabitants, that contain a city called Titusville, with a population of over eight thousand inhabitants, situated twenty-seven miles from the county seat? Or all counties with a population of over sixty thousand, watered by a certain river or bounded by a certain mountain? There can be no proper classification of cities or counties, except by population. The moment we resort to geographical distinctions, we enter the domain of special legislation, for the reason that such classification operates upon certain cities and counties to the perpetual exclusion of all others. . . . That is not classification which merely designates one county in the commonwealth and contains no

¹ 88 Pennsylvania State, 258

provision by which any other county may by reason of its increase of population in the future come within the class.¹

II. *What are Municipal Affairs?*

A consideration of the cases which have been decided relative to this question will lead to the conclusion that to the courts which have been called upon to consider the matter, the special character of the act involved has assumed much greater importance than the general character of the powers which the legislature is forbidden to grant by special act. The decisions do not reveal any very definite conclusion as to what are corporate or municipal or internal, as distinguished from governmental affairs, and the judges have been wont to apply the prohibition of special legislation without discrimination to all matters actually attended to by the territorial divisions or their officers.² This failure to discriminate has resulted in an unduly wide interpretation of the term corporate, municipal or internal affairs, which is made to include many matters that, in other branches of the law, are regarded as public and governmental in character. Thus in the case of *Commonwealth vs. Patton*, considered above, it was held that a special act affecting the system of judicial administration came within the constitutional prohibition of special acts relating to the affairs of counties and towns. In the same way it has been held that special acts relating to township roads and the police force were, under a similar prohibition, unconstitutional.³ In most

¹ To a similar effect is the New Jersey decision in the case of *State vs. Philbrick*, 15 Atlantic Reporter, 579. Here an act referring exclusively to boroughs which are sea-side resorts, was held unconstitutional, the court saying: "Contiguity to sea is no ground for the existence of a different rule in respect to the general amount of taxes to be raised [the act affected the method of raising taxes], and I am clear that no reason can be suggested why the power to designate the amount should, in boroughs not lying on the ocean, be committed to the people at large, while in boroughs on the sea the power should be placed in the hands of commissioners." See also the case of *Clark vs. Cape May*, 14 Atlantic Reporter, 581, which referred to sea-side boroughs and adopted a different method for the organization of their police force.

² Cf. *Horton vs. Mobile School Commissioners*, 43 Ala., 598.

³ *State vs. Township Committee of Northampton*, 14 Atlantic Reporter, 587; *Board of Chosen Freeholders vs. Buck*, 51 New Jersey Law, 155; *Clark vs. Cape May*, 14 Atlantic Reporter, 581.

other branches of the law all these matters — the administration of justice, of highways and of the police — are regarded as matters rather of central than of local concern.

On the other hand it has been held that, notwithstanding the existence of a constitutional provision forbidding the legislature to incorporate cities, towns and villages by special act, the legislature may by such an act provide for the incorporation of a sanitary district, with powers of taxation, which has no regard for existing boundaries of previously created municipalities. Such a construction enables the legislature practically to take out of the control of the districts which have been incorporated prior to the passage of the constitution, the management of all those matters which may be put under the rather vague term "sanitary affairs," many of which are somewhat local in character. This opens the way for an almost complete nullification of the constitutional provision.¹

The only court which has clearly seized the distinction between corporate and governmental powers would seem to be that of Ohio. In this state the conferring of corporate powers by special act is not permitted by the constitution. But the court has held that it was perfectly proper for the legislature to provide by special act for the appointment of a board of police commissioners in a city, on the ground that the board upon which the powers were conferred was not a corporation, and that therefore the statute, though special, was not unconstitutional.²

Notwithstanding the general failure to discriminate between municipal and purely governmental affairs, it may, perhaps, be well to consider the decisions which have held unconstitutional special acts interfering with internal affairs of various districts. In the first place it has been decided that the legislature may not provide a general system of administrative organization for

¹ *Wilson vs. Board of Trustees*, decided in Illinois and reported in 27 North-Eastern Reporter, 203. See also *People vs. Draper*, 15 N.Y., 532; *Metropolitan Health Board vs. Heister*, 37 N.Y., 661; *People vs. Pinckney*, 32 N.Y., 397.

² See *State vs. Covington*, 29 Ohio State, 111, approved in *State vs. Baughman*, 39 Ohio State, 455. This case seems to be cited with approval also in the case of *State vs. Constantine*, 42 Ohio State, 437.

a particular county. Such an act is held to regulate its internal affairs.¹ It is improper also by special act to extend the boundaries of a particular city.² Further, it has been generally held that any attempt of the legislature to regulate the duties or salaries of municipal officers, *i.e.*, officers whose duties are in connection with the public works of the city, is forbidden by any of these constitutional provisions.³

A number of cases have arisen in the courts of Illinois on the question as to what are corporate officers and corporate powers. The constitution provided that the legislature should not grant power to levy taxes for corporate purposes to other than corporate officers. An act having been passed giving powers of taxation for levee and drainage purposes to a private company, the court said :

As the object of the constitutional clause was to prevent the legislature from granting the power of local taxation to persons over whom the population to be taxed could exercise no control, it is evident that by the phrase "corporate authorities" must be understood those municipal officers who are either directly elected by the population or appointed in some mode to which they have given their consent.⁴

This case is of value not only in so far as it defines the term "corporate authorities" under the laws of Illinois, but also as it indicates that drainage and sewerage powers are corporate rather than governmental in character. In this state it has also been held that the construction and maintenance of parks is to be regarded as a corporate purpose, that officers for the admin-

¹ *Mortland vs. Christian*, 52 New Jersey Law, 521, 537.

² *City of Wyandotte vs. Wood*, 5 Kansas, 603. See also *City of Westport vs. Kansas City*, 103 Missouri, 141, where it was held that when the constitution gives cities power to frame charters for their government consistent with and subject to the constitution and laws of the state, if a charter contains a provision fixing the limits of the city, the legislature may not, by special act, change these limits. But see *State vs. Warner*, 4 Washington, 773, where it was held perfectly proper for the legislature, under such a constitutional provision, to extend the limits of a city, provided that they were not fixed by the charter.

³ *State vs. Pugh*, 43 Ohio State, 98, 110; *McCarthy vs. Commonwealth*, 110 Pennsylvania State, 243; *State vs. Simon*, 22 Atlantic Reporter, 120.

⁴ *Harward vs. The St. Clair & Monroe Levee & Drainage Co.*, 51 Illinois, 130.

istration of parks are corporate authorities, and that, therefore, the legislature could not appoint certain persons as park commissioners and give them the power to purchase and construct parks to be paid for by a municipal corporation. Where the legislature had attempted to do this the courts refused a *mandamus* to force the city of Chicago to issue bonds.¹ A somewhat similar conclusion was reached by the courts of Michigan in what is known as the Detroit Park case.²

In this last case Judge Cooley advanced the view that our system of government is based upon a right in different localities to govern themselves, and that an attempt by the legislature to construct city parks without the consent of the city violates this fundamental right, and would, therefore, even in the absence of a specific prohibition, be unconstitutional. The same decision was reached also in the case of *People vs. Hurlbut*.³ Here the legislature had passed an act to establish a board of public works for the city of Detroit, and had named the members of the board in the act. The court held that the act was unconstitutional, not only on the general ground that the privilege of local self-government was a part of the American system, but also because the constitution of Michigan provided that municipal officers should be elected or appointed in such manner as the legislature might direct. It was held that this provision, taken together with other provisions of the constitution, assumed that such municipal officers were to be elected or appointed by the people or the authorities of the municipality, and that the legislature had no right to assume control over the appointment of officers who, like commissioners of city works, were purely local in character. In Ohio, however,⁴ a general act which gave the governor power to appoint boards of public works in cities was held to be perfectly constitutional, and in Massachusetts the view is repudiated that, in the absence of special constitutional provisions, the Ameri-

¹ *People vs. the Mayor, etc., of Chicago*, 51 Illinois, 17.

² *People vs. the Detroit Common Council*, 28 Michigan, 228.

³ 24 Michigan, 44

⁴ *State vs. Smith*, 44 Ohio State, 348.

can system is based upon the local self-government idea.¹ Finally, this right of home rule is not recognized even in such states as California, where certain cities have the right to frame their own charters subject to general laws. There it has been held that a general law passed subsequent to the charter will supersede the charter. This has been held both as to police courts and as to local assessments.²

The constitutional restrictions under consideration have been construed as preventing the legislature from providing by special act for the issue of bonds to build public buildings in counties;³ for the establishment of a reform school;⁴ or for a system of taxation and local assessment.⁵ A somewhat similar conclusion has been reached in California. The constitution of this state provides

that it shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrain their powers of taxation and assessment; [and] that each county, town, city and incorporated village shall make provision for the support of its own officers, subject to such restrictions and regulations as the legislature may prescribe.

The court held, on the basis of these provisions and of the general principles of American local self-government which were declared to be embodied in these provisions and in the constitution as a whole, that the legislature could not order an improvement of a local character to be made in the city and levy an assessment to pay for it.⁶

In the absence of constitutional limitations on the legislature its power has been recognized as including all such acts as have been mentioned, even without the consent of the

¹ *Commonwealth vs. Plaisted*, 148 Massachusetts, 375.

² *Thomson vs. Ashworth*, 73 Cal., 73; *People vs. Henshaw*, 76 Cal., 436; *ex parte Ah You*, 82 Cal., 339; *Davies vs. Los Angeles*, 86 Cal. 37.

³ *Devine vs. Cook County*, 84 Illinois, 590.

⁴ *State vs. County Court of Jackson County*, 89 Missouri, 237.

⁵ *State vs. Philbrick*, 15 Atlantic Reporter, 579; *Gilmore vs. Norton*, 10 Kansas, 491, 503. See also *Atchison vs. Bartholow*, 4 Kansas, 124.

⁶ See *People vs. Lynch*, 51 California, 15, and *Schumacher vs. Toberman*, 56 California, 508.

municipal corporation. Thus it may force a city to expend money and even incur indebtedness to erect public buildings,¹ to construct a bridge,² and to pay private claims not legally binding.³

The question, what is a municipal, as distinguished from a central or state officer, has also arisen. It must be confessed that the cases upon this point are not very satisfactory, nor are they very numerous, except where police officers are concerned. It has, however, been held in Missouri⁴ that the mayor is a municipal officer. Further, as has already been pointed out, the courts of Illinois or Michigan have held that drainage, levee and park officers and officers for municipal public works are municipal or corporate officers.⁵ As to police officers the decisions are conflicting. The courts of Michigan, Massachusetts, Nebraska, Kansas and Maryland hold that they are state and not local officers;⁶ the courts of Kentucky and New York hold that they are local and municipal officers.⁷ It is only fair to the courts of New York to say, that when the legislature undertook to form several existing municipal corporations into large districts for police administration in its various branches, such as the preservation of the peace and the care of the public health and safety, it was held that the constitutional provision which assured to cities the right to elect their own officers did not prevent the legislature from providing for the appointment by the governor of the officers placed at the head of the new districts.⁸ In the case of *Astor vs. The Mayor*⁹ the court went still further, and held that the legis-

¹ *Perkins vs. Slack*, 86 Pa. St., 382 (Philadelphia City Hall case).

² *Philadelphia vs. Field*, 58 Pa. St., 320; *Pumphrey vs. Baltimore*, 47 Md., 145.

³ *Gulford vs. Supervisors*, 13 N.Y., 143; *Mayor, etc., of New York vs. Tenth National Bank*, 111 N.Y., 446; *Brewster vs. Syracuse*, 19 N.Y., 116.

⁴ *Britton vs. Streber*, 62 Missouri, 370.

⁵ *Supra*, p. 13.

⁶ *People vs. Mahaney*, 13 Michigan, 481; *Commonwealth vs. Plaisted*, 148 Massachusetts, 374; *State vs. Seavey*, 22 Nebraska, 454; *State vs. Hunter*, 38 Kansas, 578, and *People vs. Mayor*, 15 Maryland, 376.

⁷ *Shad vs. Crawford*, 3 Metcalfe, Kentucky, 207; *People vs. Albertson*, 55 N.Y., 50. See also *Evansville vs. The State*, 118 Indiana, 426; *State vs. Denny*, *ibid.*, 382.

⁸ *People vs. Draper*, 15 N.Y., 532; *Metropolitan Health Board vs. Heister*, 37 N.Y., 661; *People vs. Pinckney*, 32 N.Y., 397.

⁹ 66 N.Y., 567.

lature might confer local-assessment powers, which had theretofore been exercised by the common council, upon commissioners of parks who had been appointed by the governor and the senate. This would seem to indicate that the legislature might take the management of city parks also into its own control.

This review of the decisions of the courts in construction of the constitutional provisions intended to insure to municipal corporations a greater freedom from legislative interference, cannot fail to impress us with the feeling that these provisions have not fulfilled the expectations of those who advocated their passage. The courts have, indeed, given a very wide meaning to the term municipal or local or internal affairs, including within it many matters which, in other branches of the law, are regarded as governmental and not corporate in character—as affecting the state as a whole, rather than a locality. But the term special act has been so narrowly defined as actually to permit the legislature, at almost any time that it may see fit, to frame a law that will apply to only one of the cities within the state, and yet will be perfectly constitutional. It may be logical to distinguish, as the courts have done, between an act which has merely temporary application, and which, if special, will be unconstitutional, and an act which is passed for all time, which may thus eventually be applicable to all of a class, and which is therefore constitutional even if at the time of its passage it affects only one city ; but such a distinction certainly renders the constitutional provisions almost futile for any purpose of securing to municipal corporations immunity from special legislative action.

We can hardly blame the courts, however, for their interpretation of these constitutional provisions. For we must admit that classification of cities is permitted under such provisions. As Judge Paxson points out,¹ if the classification of cities is not regarded as constitutional, certain cities will be deprived of all means of development. But when we once admit that

¹ *Wheeler vs. Philadelphia*, 77 Penn. State, 338.

classification of cities is proper, the logical result must be that which the courts have reached. The truth is, this device for insuring to municipal corporations that power to govern themselves which is everywhere regarded as extremely necessary, is not elastic enough under our system of enumeration and strict construction of municipal powers. No general law that has to descend into details can apply with advantage to all the cities within the scope of its operation. It is clearly impossible, in a state where the geographical conditions vary widely in different parts, to pass a general law which, even at any given time, will permit all the cities to make the best use of their powers. Much more evident, when we consider the changes of economic and social conditions under our present rapidly advancing civilization, is the impossibility of framing any general law touching details of municipal life, for application to the future as well as to the present. On this account, even in some of the states which have constitutional clauses for ensuring home rule, we hear from time to time the demand for a return to the old method of special charters and special and local legislation. Such a demand was made only a few years ago in New Jersey. When we remember how little effect the constitutional provisions forbidding special legislation have had, the demand for a return to unlimited special legislation is strong evidence of the impracticability of the present system. The Missouri method, which has been adopted also in California and Washington, is little better than the more common one. For here, while the right of framing their own charters is secured to certain cities, general laws may modify the charters adopted, and general laws may be very special in their application.

These considerations are not, however, the only ones which militate against such methods of regulating municipal affairs. The fact that in this country during the last century the municipality has become of great importance as an agent of the state government, makes it absolutely necessary that the latter shall have a large measure of control over the former. Were the municipality now what it was in its early history, merely an

organization for the satisfaction of local needs, this control would not be so necessary; but under present conditions its existence and its frequent exercise are indispensable to the proper and uniform administration of many matters which are usually attended to by municipal officers. The great difficulty which the courts have had in distinguishing municipal from public or governmental affairs, makes it extremely hazardous to tie the hands of the legislature, which is in our system the only guardian of uniform administration. If the legislature is deprived of its control, business of a really general character may be variously conducted in different parts of the state, with a resulting lack of uniformity and an unequal distribution of the burdens of the people ; or it may be attended to inadequately by the officers of some particular municipal corporation, with disastrous effect to the people of the state at large, as, *e.g.*, in the case of the public health. These dangers, it must be conceded, are very largely avoided by the narrow definition which the courts have given to the term special act ; but it must also be admitted that in avoiding these dangers the courts have, at the same time, almost nullified the constitutional provisions which they were called upon to interpret, and have left the municipality, almost as much as before the adoption of these provisions, at the mercy of the legislature.

Thus, from whatever point of view we regard the matter, we are forced to the conclusion that the now usual methods of providing for municipal home rule are not proper for the United States. It was undoubtedly this conclusion which forced the recent constitutional convention of the State of New York to abandon them all, and to incorporate into the new constitution which was adopted last November a provision which is quite novel in American constitutional law, — a provision framed in such a way as both to avoid the possibility of its complete nullification by the courts through their power of interpretation, and also to afford an elastic and adaptable method of regulating the relations of the legislature to municipal corporations. The new constitution distinctly defines special acts relative to cities. It provides that all cities shall be

classified according to population, the first class including those having a population of 250,000 or more, the second class, those with a population of 50,000 and less than 250,000, and the third class embracing all other cities. It goes on then to say:

Laws relating to the property, affairs or government of cities and the several departments thereof, are divided into general and special city laws. General city laws are those that relate to all the cities of one or more classes. Special city laws are those which relate to a single city or to less than all the cities of a class.

But the constitution does not take the further and dangerous step of prohibiting special legislation. It provides merely that a copy of every special city bill shall be immediately transmitted to the mayor of each city affected by it, and that either the mayor or the mayor and council of the city concurrently shall, after a public hearing, signify either approval or disapproval of the particular bill. In case of disapproval the bill may not become a law until it has been reenacted by the legislature; and in all cases it is subject, like other bills, to the action of the governor. The constitution further provides that the bill must be acted upon by any city affected by it within fifteen days after receipt of a copy thereof by the city officials, and failure of a city to take action is to be regarded as a disapproval of the bill. Finally it is provided that in all cases special city laws shall, after they have been finally passed, have added to their title "accepted by the city" or "passed without the acceptance of the city," as the case may be.

While this method of limiting the power of the legislature over cities does not, of course, ensure to the cities an absolute immunity from legislative control over purely local matters, it corrects the most serious evil of the old system of special and local legislation. This was that many city bills were rushed through the legislature without the knowledge of the officers of the city or without the knowledge of the people of the city who might be affected by the laws. Now, however, the consti-

tution specifically requires the legislature to give public notice and an opportunity for a public hearing concerning any such bill in every city to which it relates.

The New York method does not, it is true, provide the same securities for good legislation as are to be found in the English method of special legislation. There, all local legislation is hedged about with so many formalities by the standing orders of Parliament, and must conform in so many respects to the provisions of certain laws known as "clauses acts," that it is not an easy matter to get it through Parliament, and when passed, it is seldom of an objectionable character. But we have every reason to hope that the new constitution of New York has offered an adequate remedy for one of the greatest evils in our system of regulating municipal corporations. If we may in the future obtain an equally satisfactory solution of the problem of concentrating official responsibility, and if we may see a greater interest in municipal politics developed as a result of the greater privileges of home rule which we have obtained, we may hope that our cities will be much better governed than they have been in the past. Without the development of such an interest, however, little improvement can be hoped for. No mere change in legislation can be expected to do much for us. No system of government, however well devised, can be satisfactorily administered unless the people, upon whom the responsibility finally rests, regard the government as their own. But the indifference which has been too evident in many of our large municipalities has undoubtedly been in part due to the feeling of the people that their efforts were of little avail. So much of interest to the city of New York, for example, has been attended to at Albany rather than in the city itself, that the citizens might well be excused for failing to come forward, knowing that their efforts could be at any time, and as a matter of fact had in the past often been, frustrated by the legislature.

FRANK J. GOODNOW.

THE HOUSING OF THE WORKING CLASSES IN LONDON.

IN London nearly one hundred thousand people are now housed in dwellings built as a result of the movement which was started in June, 1844, by the Metropolitan Association for Improving the Dwellings of the Industrial Classes. In explaining how this immense result has been brought about, I shall endeavor to show what Parliament and the state departments have done ; what has been done by the municipal authorities ; what has been accomplished by corporations working on commercial principles ; what has been done by corporations organized partly on a philanthropic and partly on a commercial basis ; what classes have been reached by the work ; and what has been done by associated effort seeking to improve the home surroundings of people whom moral rather than financial poverty places outside the scope of the other organizations.

I.

Parliamentary and municipal aid to schemes for improving the dwellings of the working classes in London date from a much later period than the organization of the Metropolitan Association. It seems most expedient, however, to deal at the outset with the action of the legislature and the municipalities. These bodies have had a large and important share in the work, and the immense development of the movement in the last twenty years will be better understood if their action is borne in mind.

In this development of the municipal spirit, as in the purchase and operation of gas and water works, provincial municipalities led the way. Liverpool began demolishing rookeries as far back as 1864, and in 1866 Glasgow commenced similar work, under Parliamentary powers which also enabled the city

to erect and maintain houses specially adapted for the laboring classes. The acts of Parliament for Liverpool and Glasgow were special to these cities. In 1868, an act, general in its scope and applicable to London as well as to the provincial municipalities, was passed by Parliament. It was a private member's bill, carried through the House of Commons after much hard work by the late Mr. McCullagh Torrens, and was intended to help forward work like that which Liverpool was carrying out under its act of 1864. Under the Torrens Act the parochial authorities in London were empowered to demolish any building which their medical officers reported as being in a sanitary condition that was dangerous to health, and consequently as unfit for habitation. No provision was made in the law for compensation to owners, and as a result of this omission as well as in consequence of the peculiarly parochial character of London vestry politics, the act of 1868 had no effect in helping forward the movement for better working-class dwellings. No one can recall a case in which a vestry acted under the measure of 1868 to the extent of pulling down a block of unsanitary buildings. Usually, after the medical officer had reported, the dwellings were given an internal coat of whitewash and there the matter ended. In 1879 the Torrens Act was amended, making it possible for a vestry to vote compensation; but even then vestries did not avail themselves of the measure. To do so involved charges which would have fallen upon the householders in the vestry areas and added to the burden of local taxes, and the members of the vestries conceived that charges like these should be borne by the whole of London, and not by the people in the particular local-government area in which the unsanitary property was situated.

Although there was thus legislation for London as early as 1868, it was not until the Artizans' and Workmen's Dwellings Act of 1875 was passed and was put into operation by the Metropolitan Board of Works, the then existing central governing authority for the whole of London, that the movement of 1844, now no longer confined to one association, but shared in

by half a dozen, received any aid either from Parliament or from the bodies responsible for the local government of London. The great effect of the legislation of 1875 was the help it gave to the various associations in securing sites well adapted for their purposes on advantageous terms. Up to this time these associations, notwithstanding their semi-public character, had gone into the real estate market and acquired land on the same terms as the ordinary buyer. When the Metropolitan Board of Works about 1878 began to avail itself of the provisions of the act of 1875, and of a Metropolitan Improvement Act passed in 1877, greatly improved opportunities were offered to the various workmen's dwellings companies; and for the next twelve years there was more building on the part of the three principal corporations — the Metropolitan Association, the Improved Industrial Dwellings Company, and the Peabody Trustees — than there had been in the entire period since 1844.

The Metropolitan Board of Works during this period was busy with the improvements which have now wholly transformed great areas of central London, giving to the metropolis Shaftesbury Avenue, Charing Cross Road, Roseberry Avenue and new Gray's Inn Road, in place of the narrow thoroughfares and the numberless courts and alleys which formerly existed in these parts of the west-central district. The legislation of 1875 and 1877 empowered the Metropolitan Board to carry out these great undertakings, to clear away the rookeries, and to open out the districts these rookeries covered with magnificent thoroughfares in keeping with the character and modern needs of the metropolis. This legislation further provided that in making these improvements the board should not permanently displace any of the working classes living in the cleared areas. The law was explicit on this point. It set out that the board should

provide for the accommodation of at least as many persons of the working class as may be displaced in the area with respect to which the scheme is proposed, in suitable dwellings, which, unless there are

special reasons to the contrary, shall be situated in the limits of the same area or the vicinity thereof.

The board was permitted to clear the sites and lay out new streets across them, graded and sewered ; but it could not build and permanently keep in its possession the dwellings to be erected thereon. What it could do was to "engage with any body of trustees, society or persons to carry the whole or any part of such scheme into effect" upon such terms as it might think expedient. The board bought the land and buildings to be cleared on the best terms it could make with the owners, tore down the old structures, and then sold the sites, or such of them as were necessary for carrying out the workmen's dwellings part of the scheme, to persons or associations who were willing to build the dwellings and permanently maintain them for the purposes for which the land was sold. These conditions were carefully set out in the agreements, and any failure to comply with them would result in the reversion of the sites and buildings to the board. All the sites had to be sold within five years of the date of clearing.

These conditions, of course, told adversely on the prices offered for the land coming within the operation of these improvement schemes. The board seldom obtained more than one-third of the market value of the land. There were thus large differences between the prices paid for the land with the rookeries on it and the prices obtained for the cleared land from the builders of dwellings for the working classes. Some of this loss was made up by the increased value of the frontages ; the balance was debited to the particular improvement for which the land was cleared, and became a charge on the general local taxes of the metropolis.

The existence of these provisions in the acts of 1875 and 1877, due to the care Parliament had taken that the working classes should not be displaced and permanently incommoded by the great metropolitan improvements, gave a tremendous impetus to the building of workmen's dwellings between 1878 and 1888. The workmen's-dwellings companies were some-

times building on as many as half-a-dozen cleared areas in a single year during this period. The activity of the Peabody Trustees, for instance, may be judged by the fact that between 1878 and 1884 the number of separate dwellings in their blocks jumped up from 2,348, accommodating 9,860 people, to 4,359, accommodating 18,000 people. The building operations of the Peabody Trust during this period far out-ran their available capital, which was augmented by a loan of nearly £400,000, advanced at a low rate of interest by the Public Works Loan Commissioners. These commissioners form a sub-department of the imperial treasury, and their function is to obtain loans for works carried out by municipalities and other public bodies. They are able to obtain loans at less than three per cent, and they re-advance them for carrying out public works at a rate seldom exceeding three and a half per cent. In this way both the Peabody Trustees and the Improved Dwellings Company were brought into contact with the imperial government, and thus in their schemes received substantial help from the government, as well as from local governing bodies of the metropolis.

II.

Although the fiftieth annual report of the Metropolitan Association was issued to a meeting of shareholders held on the 21st of June, 1894, the work of organizing the association began not in 1844 but in 1841. In the autumn of that year, at a meeting presided over by the then rector of Spitalfields, it was decided that an association should be formed "for the purpose of providing the laboring man with an increase of the comforts and conveniences of life, with full compensation to the capitalist"; that the first object of the association be "to erect, rent or purchase suitable buildings, to be let in compartments at a moderate weekly rent"; that the second object be "to erect, rent or purchase dormitories for the reception of nightly lodgers"; and the third, "to erect, rent or purchase small tenements for families to be let at a moderate weekly rent."

Notwithstanding the fact that this scheme offered "full compensation to the capitalist," capital was subscribed but slowly ; and the first annual meeting of shareholders was not held until March, 1846. It was then clearly set out that the plan of the association did not involve any attempt to assist the poor by offering them any gift or by doing anything for them in the shape of charity. Such attempts, it was urged, were always too limited and too transient really to benefit the recipients, while they had a tendency to injure and corrupt the poor by lessening their self-reliance and destroying their self-respect. Nor did the pioneers of this great movement "imagine that it would be possible for any private body of men to provide suitable habitations for all the poor, even of the metropolis."

They thought, however, that

it might be practicable, by the combination of capital, science and skill, to erect more healthy and more convenient houses for the laborer and the artizan, and to offer such improved dwellings to these and similar classes at no higher rent than they paid for the inferior and unhealthy houses which they at present occupy.

They thought, moreover, that

if it were practicable to present some examples of houses well built, well drained and well supplied with air, water and light, and to offer these dwellings at no greater charge than is at present demanded and obtained for houses in which no provision whatever is made or even attempted for the supply of any of these essential requisites of health, cleanliness and comfort, a public service would be rendered beyond the mere erection of so many better constructed houses ; that the influence of this example could scarcely fail to be beneficial ; that especially it might help to render it no longer easy for the landlord to obtain an amount of rent for houses of the latter description which ought to suffice for those of the former, and that it might thus indirectly tend to raise the general standard of accommodation and comfort required in all houses of this class.

In short, the proposal of the association was that the industrious man should pay the full value of his house ; but that for the sum he paid

he should possess a salubrious and commodious dwelling, instead of one in which cleanliness and comfort can find no place ; in which he can neither maintain his own strength, nor bring up his family in health, but must constantly spend a large portion of his hard-earned wages in the relief of sickness.

The charter of incorporation limited the dividends to five per cent. From the outset, however, the directors of the Metropolitan Association have possessed what Dr. Vaughan, the Roman Catholic Archbishop of Westminster, once aptly described as "the happy knack of uniting, in very close bonds, love of their neighbors and five per cent." Four and a half per cent was the actual dividend paid on the capital of the company in its earlier years ; but for twenty years past the dividends have been at the maximum rate allowed by the charter.

The first building erected by the Metropolitan Association, and consequently the first of its kind in London, can be seen by the traveler who is entering London by the Midland Railway. It stands within a quarter of a mile of St. Pancras Station, on the right hand side of the line, opposite the Old Churchyard of St. Pancras. This site was leased for a period of ninety-nine years, at a rental of ninety pounds a year ; and on it was built a block of dwellings of five floors containing accommodation for 110 families. It comprises twenty sets of two-roomed, and ninety sets of three-roomed tenements. The rooms are so contrived that ample light is secured to each, while the dwellings are kept quite distinct and independent of one another. Each dwelling is provided with a supply of water drawn from a cistern, filled from the mains night and morning (formerly the common method in London houses) and also with the means of carrying off ashes and refuse through a shaft accessible from the scullery. In dwellings where there are two bedrooms, each bedroom has a separate entrance from the sitting room, and the larger bedroom has a fireplace. The living rooms are furnished with a range, hot-water boiler and oven. Under the slate slopstone in each scullery is a galvanized iron coal-box. Londoners buy their coals in bags, a method of delivery long prescribed by law,

so that it is an easy matter, and one involving little dust, to shoot the coals into the bins under the sinks. In each scullery also there is a meat safe fixed against an external wall in which an air brick is placed. In every respect the dwellings are quite self-contained, the tenants sharing nothing in common but the halls and stairways, the asphalted courtyard in front and the drying ground in the rear.

All the St. Pancras dwellings were soon rented; and from 1846 to 1874 the Metropolitan Association embarked on eleven other undertakings, including seven dwelling blocks and four sets of cottages — one set in Beckenham in Kent, and three at the East End. Between 1874 and 1894 only two additional dwelling blocks were erected. Of late years the association has devoted its available capital to renovating and improving the dwellings erected in the earlier period of its activity, and for the present its building account is closed. It has now provided accommodation for about 6500 people, of whom some 1600 are housed in its cottages. Its total expenditure up to the end of March, 1894, was £275,300. Its largest expenditure was on the well known Farringdon Street building, which comprises 253 tenements and ten shops. The capital outlay on this building was £42,300. The Farringdon Street building is splendidly situated from the point of view of a workman's-dwellings company. It stands on high ground, within twenty minutes' walk of either the Bank or Oxford Circus, and in years when special expenditure has not been necessary, has never returned the company a profit of less than five and three-quarters per cent. In some years the profit has been as high as six per cent. The Farringdon Street and St. Pancras buildings pay best of all the association's enterprises. Labor and materials were very much cheaper in the forties than nowadays, as is shown by the fact that while the St. Pancras block cost £43 a room, the cost of the Farringdon Street building, erected in 1874, was at the rate of £48 10s. a room. The ground rent in Farringdon Street is one shilling and a farthing a week per dwelling, as against threepence three farthings per dwelling in the pioneer building at St. Pancras.

As regards the scope of its operations, the Metropolitan Association differs from any of the companies and building trusts which have followed it. The Improved Dwellings Company and the Peabody Trustees have confined themselves to the erection of great buildings in the crowded parts of London. The Metropolitan Association, while it has ten such buildings, accommodating in the aggregate 1,386 families, has also experimented with cottage dwellings in the outlying districts; with a great lodging house for single men; and in a way with partly furnished single-roomed dwellings. It has succeeded with the cottages; but the lodging house and the single-roomed dwellings were abandoned long ago. These latter experiments the company now admits were attended with failure.

The lodging house for single men was tried as early as 1849, and was the second or third enterprise on which the company embarked. A sum of £13,000 was expended on a building in Albert Street, Spitalfields, which provided accommodation for 234 single men. The lodging house was maintained for eighteen years; during this time it never by the most careful management returned a profit of one per cent,¹ and so the directors abandoned this part of the association's original scheme, and expended another sum of £4,700 in converting the building into dwellings like those at St Pancras. The Albert Street building now provides accommodation for forty-six families, comprising some 220 people, and for many years past has returned a profit seldom falling below three and a half per cent.

The experiment with single-roomed dwellings was made at a much later period, and was in the nature of a speculation by the late Sir Ralph Howard, M.P., who since the organization

¹ The London County Council has recently erected a municipal lodging-house, concerning which Mr John Burns has said to Dr C. B. Spahr, of *The Outlook* "When we built our magnificent municipal lodging-house, we found that the proposed fivepence charge did not cover expenses and pay three per cent on the bonds. We at once raised the charge to sixpence, and since that have been paying expenses and five per cent. This building, it is true, is not reaching the class for whom it was intended, but it is paying for itself; and we propose to build more which shall reach the lower class."

of the association in 1844 had been its chairman. In 1871 he built a house containing sixteen large single rooms, with washing tubs and clothes boilers and a supply of water arranged for each floor. Each room was furnished with two iron bedsteads and a curtain to divide them, and two berths for children, arranged as on board ship, were constructed at the side of the fireplace. But nobody seemed to want a home of this description. When applicants for house accommodation were directed to these single partly-furnished rooms, they declared that they wanted two rooms ; and none of them seemed pleased with the iron bedsteads, the curtains and the ship berths. They had their own furniture, and had no use for these fixtures belonging to the landlord. The house stood almost empty for a year, when the bedsteads were sent as a gift to a hospital, and the building was converted into one of two-roomed dwellings.¹

Between the Metropolitan Association and its tenants there have never been any relations except those of landlord and tenant. The association has always selected its tenants with great care, and if an undesirable tenant has crept in, he has been speedily got rid of. Rents vary from two and sixpence to nine shillings and sixpence a week, according to the number and location of the rooms. Tenements on the ground floor usually bring sixpence a week less rent than those on the floors above, as being less quiet, less private, and more exposed to breakage of windows, the repairing of broken windows being a charge which falls upon the tenant. Rents are collected weekly in advance. No arrears are allowed.

The mortality in the buildings of the Metropolitan Association has always been lower than that of the metropolis generally. For eight years prior to 1875, when the general rate of the metropolis was twenty-four per thousand, the rate in the association buildings was sixteen per thousand. For 1893 it was 15.37 in the dwellings and 21.3 for the metropolis generally. There has been a similar disparity between the rates of

¹ The Improved Dwellings Company made an experiment similar to that of Sir Ralph Howard by fitting up a number of one-roomed dwellings in one of their buildings. Here also the experiment was a failure.

mortality in all the buildings of the improved-dwellings corporations and the rate of the metropolis at large. This can be best accounted for by the great care that is taken of the sanitary arrangements of the buildings, and by the fact that the pick of the working classes resident in the more thickly populated areas of London, is to be found in these buildings. Care is taken to keep out the indolent, the drunken and the improvident. Rigor in enforcing the prompt payment of rent quickly weeds out such people. All the dwellings corporations, even those on semi-philanthropic lines, insist that it is no charity to allow a family to run behind in its rent.

III.

"From health contentment springs" is the motto of the Improved Industrial Dwellings Company, which was organized in 1863, nearly twenty years after the Metropolitan Association commenced its work. Like the Metropolitan Association, the Improved Dwellings Company was organized on a strictly commercial basis. It is now paying its shareholders five per cent, and they have been receiving this dividend almost from the time that their first properties became filled with tenants. This company was the outcome of an experiment in building houses for the working classes made by Sir Sidney Waterlow in 1861. He built blocks in Finsbury for the accommodation of ninety families, and the result from these experimental buildings was so encouraging, both financially and socially, that at his instance a few wealthy and philanthropic men met at the Mansion House and established the Improved Industrial Dwellings Company. These gentlemen subscribed the first capital of £50,000, and elected the Earl of Derby, then Lord Stanley, chairman. The work the new company was entering upon was philanthropic in its character and aims; but that fact was to be subordinated, at least in the ordinary sense of the word philanthropy, to the conviction that "the independence of the tenants could not be maintained, or the necessary funds secured for the work, unless a fair dividend could be paid on the capital subscribed." The

tenants were to be in no sense the recipients of charity. They were simply to enjoy complete, comfortable and healthy homes, in good and convenient locations, for about the same rent that they would have to pay for two or three rooms in ill-adapted and unsanitary houses in inferior situations. The new company, best known in London as the Waterlow Company, commenced work at once, and by June, 1864, had built Cobden Building in Kings Cross Road, only a little way from the building with which the Metropolitan Association commenced its work.

The dwellings constructed by the Waterlow Company are in nearly every case self-contained, each tenant enjoying separate domestic conveniences. In a few instances, where economy of space and outlay was sought, the dwellings were so arranged that two or more tenants had the use of conveniences in common ; but the experiment of building in this way was not a success. Rents for these dwellings were in proportion to the diminished cost of construction ; but cheapness did not recommend them to the working classes. The thirty years' experience of the Waterlow Company has made it clear that tenants will gladly pay higher rents for the exclusive use of domestic offices; and long ago the directors came to the conclusion

that the working classes desire homes which shall be constructed to meet the requirements of English family life, and the occupation of which shall not engender a feeling of dependence ; but shall rather stimulate self-reliance by the consciousness that a fair market price is paid for the comforts enjoyed.

The capital with which the Waterlow Company began work in the early sixties was quickly increased ; and later on, in the period of building activity which followed upon the improvements carried out under the acts of 1875 and 1877, the company obtained large loans from the Public Works Loan Commissioners. In 1884, when the company had been in existence for twenty-one years, it had completed thirty-one buildings, providing 4,314 dwellings, with accommodation for 21,486 people, and had in course of erection four other buildings containing 665 dwellings, with accommodation for 3,382 people.

The company was also managing 153 improved dwellings erected by private owners. This is a department of the company's work which has been extended since that time, and which is likely to continue extending long after the company has finished building on its own account. One principal reason for this extension is that whenever a railway company demolishes houses, the act of Parliament under which the demolition takes place calls upon the company to erect workmen's dwellings for nearly as many people as are temporarily displaced by the clearances. Thus the Midland Railway Company is now the owner of a large number of improved dwellings in the neighborhood of St. Pancras, built under these conditions; and the number of dwellings so built will be largely increased during the next five years by the entry of the Manchester and Sheffield Railway Company into London. After long waiting, the Manchester and Sheffield undertaking has at last obtained a Parliamentary right of way into the metropolis. It will come in by way of St. John's Wood. The making of the new line will render necessary large clearances in the northwestern district of London, and the workmen's houses that are demolished will have to be replaced by improved dwellings, the management of which will come under the control of the Waterlow Company.

The capital account of this company was closed in 1892, with the completion of the Moore Blocks, on the Duke of Westminster's estate, between Grosvenor Square and Oxford Street. No great building operations have been entered upon since that time. The Moore Building added forty tenements to the company's rent roll, bringing up the total number of improved dwellings under its control to 6,123, giving accommodation for 31,000 people.

In the course of its thirty years' operations, and in the expenditure of a capital sum amounting to £1,109,892, the Waterlow Company has been brought into contact with the Public Works Loan Commissioners, with the Metropolitan Board of Works, from which it purchased a large number of sites, with the Ecclesiastical Commissioners, who manage the real estate of the Church of England, with the Duke of Westminster, the Marquis

of Northampton, the Baroness Burdett-Coutts, and other of the large ground landlords of London. Among private owners the largest number of sites was obtained from the Duke of Westminster, and on easy and liberal terms. But whether building on land obtained from the Board of Works, and cleared for metropolitan improvements, or on land of private owners cleared to make way for modern dwellings, the mode of procedure of the Waterlow Company has been the same. The improvements have been carried out in sections, and it has been the rule that a new block of buildings should be ready for occupation before the clearing of another area was commenced. Some of the works were carried out in as many as six sections. When weekly tenants have been compulsorily removed for these clearances, compensation for disturbance, usually amounting to about one month's rent, has been granted them. The tenants thus disturbed were usually given a preference when letting commenced in the new buildings. In comparatively few cases, however, have they found their way back into the new buildings.

The relations between the Waterlow Company and its tenants are similar to those already described as existing between the Metropolitan Association and its tenants. Neither company asks a tenant any questions as to his income. An applicant for a dwelling under the Waterlow Company must furnish a reference from his employer, and a certificate from his previous landlord that he has regularly paid his rent. He must also give particulars as to his domestic condition, state whether married or a widower, and how many children over twenty years of age, between twenty and twelve years, and under twelve years are to live with him. The company will permit no overcrowding; and if a man cannot afford a tenement with sufficient rooms to accommodate his family, in accordance with the standard set up by the company's rules, he must look elsewhere for a house. Four children under twelve, with a man and his wife, may go into a two-roomed tenement; a man and wife with six children must take three rooms.

IV.

The Peabody Trustees commenced their work about the same time as the Waterlow Company, and at first the two undertakings were under the same chairman. After the Waterlow Company had been in existence for two or three years, however, Lord Derby resigned the chairmanship and devoted himself exclusively to the affairs of the Peabody Trust. The Peabody Trust is on an altogether different footing from either the Metropolitan Association or the Waterlow Company. It is not a dividend-making concern. All that the trustees aim at is to secure a return of at least three per cent on the outlays on the buildings, and to use the interest which thus accrues in adding to the estates of the trust. In 1862, when their work commenced, the trustees had a fund in hand amounting to £150,000 ; but by 1873, after Mr. Peabody's death, they were in possession of £500,000 from the Peabody gifts and bequest, in addition to the sums which had accrued in these eleven years from interest on the moneys invested and from rents of the dwellings which had then been erected. Up to the end of 1893 the trust had expended £1,242,000, including loans of £390,000 from the Public Works Loan Commissioners, and were then in possession of eighteen groups of buildings in various parts of London, comprising 215 blocks with 11,273 rooms, divided into 5,070 dwellings, with 19,937 people in residence. More than 800 of the dwellings are single-roomed tenements ; for the Peabody Trust, unlike the Metropolitan Association and the Waterlow Company, has continued the policy of providing tenements of this description.

The average rent per room throughout the Peabody buildings is two shillings and a penny three farthings ; the average rent per dwelling, four shillings and ninepence farthing per week ; and the average earnings of the heads of families in residence, one pound, three shillings and sevenpence halfpenny per week, as compared with one pound three shillings and a penny in 1873, when the rent per room averaged one shilling and ten-

pence. In the earlier years, none of the dwellings had more than three rooms. In the more modern Peabody buildings, there are a large number of four-roomed dwellings, and the higher wages of their occupants may account for the higher average of wages throughout the buildings. The more modern buildings also are devoid of the fort-like appearance of those erected in the first twenty years of the trust. These old buildings were anything but inviting in their outward appearance, and looked more like jails than workmen's residences. The example of the Waterlow Company has brought about a change and some of the newer Peabody buildings present quite attractive exteriors. This change has made them much more popular, and has enabled the trust to obtain rents only fractionally lower than those of the organizations which make a fair dividend an essential part of their scheme.

At a number of points the relations of the Peabody Trust with their tenants differ from those of the dividend-earning companies. An applicant for rooms in a Peabody building must state what wages he is earning. If they are over thirty shillings a week, he is in general not accepted as a tenant. No hard and fast rule is made as to this sum, but men with over thirty shillings a week are not of the class to which the trustees desire to give the advantages of the Peabody dwellings. Every tenant must have been vaccinated. No tenant is permitted to take in boarders, or to keep a store of any kind; nor are any of the women permitted to wash clothes other than those of their own families. This last rule is necessary owing to the laundry arrangements. There are laundries and drying rooms in most of the Peabody buildings. In this they differ from the buildings of the Metropolitan Association and the Waterlow Company. Again, wallpaper is in general use in the dwellings of these two associations, while in those of the Peabody Trust, tenants are required to disinfect and whitewash their rooms at least once a year, and must not paper, paint or drive nails into the walls. Neither are the Peabody tenants permitted to keep dogs. They are in fact much more under rule than tenants in the Metropolitan and Waterlow buildings. They are told how

often and at what time of day passages and steps must be cleaned, and when carpets and mats may be beaten ; they are forbidden to dry clothes out of their windows ; and they are required to report to the resident superintendent births and deaths and cases of infectious disease.

By reason of the fact that exceptionally advantageous terms were granted to the various dwellings corporations in connection with the sale of building sites, and of the fact that the Public Works Loan Commissioners treat them on the same basis as the municipalities, all the companies have come to be regarded as public bodies, and are almost as much subject to criticism as the county council or the school board. This has been especially the case with the Peabody Trust, because of the conditions under which it came into possession of its funds. After the trust had been in existence about seventeen years the trustees undertook to answer some of these criticisms, and in particular the reiterated charge that the buildings were occupied by a different class of people from that for which the late Mr. Peabody intended them.

It is a sufficient answer to this criticism [said the trustees] to say that the late Mr. Peabody, with whom three of the trustees lived on terms of intimacy and confidence, was fully cognizant of, and was consulted upon, the precise application of the funds bestowed by him, and that four years after the date of his first gift and subsequent to the construction and occupation of the Spitalfields and Islington buildings, he wrote to the trustees : "I cannot but express my grateful thanks for your constant attendance at the meetings of the board, and my gratification at the great success that has attended your labors. The capital will form a fund, the operation of which is intended to be progressive in its usefulness, as applied to the relief of the poor of London, so correctly defined in your recent report."

The report referred to by Mr. Peabody was that for 1865, and, like every succeeding report of the trustees, it contained an analysis of the occupations of the residents in the buildings. In 1865 they included charwomen, monthly nurses, basket makers, butchers, carpenters, firemen, laborers, porters, omnibus drivers, seamstresses, shoemakers, tailors, waiters,

warehousemen, watch finishers, turners, staymakers, smiths, sawyers, printers, painters, laundresses, letter carriers, artificial-flower makers, dressmakers, carmen, cabinet makers and bookbinders. A census taken at the present time of the inhabitants of the eighteen groups of the Peabody buildings would show people of the same classes which were set out in the report which received Mr. Peabody's endorsement.

V.

The Guinness Trust is the most recent of the corporations engaged in providing dwellings for the working classes. It was founded in 1889, and administers, under a scheme drawn up with the approval of the court of chancery, the gift of £200,000 from Sir E. C. Guinness, now Lord Iveagh, and a later gift of £25,000 from the Goldsmiths' Company of London. For its work in London, the trust began with a capital of £225,000. Out of this sum it has already built blocks of dwellings in Chelsea, Bethnall Green, Clerkenwell, Bermondsey, Walworth and Vauxhall, containing 1,870 tenements. Its general plan is like that of the Peabody Trust, its income going to swell the capital account available for building purposes. So far it has obtained no advantages from either the county council, or the Public Works Loan Commissioners; but its building at Chelsea stands on a site which was given to the trust by Lord Cadogan. † Its aim is to reach a lower class than is reached by the Peabody Trust, and to do more for its tenants. Artisans are not eligible as tenants of the Guinness dwellings, which are reserved for people of a much poorer class. The trust will take as poor people as will come; all that the trustees insist upon is cleanliness and order, and regular payment of rent. The trust permits of no arrears, and in its conditions of occupation it has a drastic clause dealing with rent payments. † In other respects the Guinness conditions of occupation are similar to those of the Peabody Trust.

The Guinness buildings are of five floors, with a laundry on each floor. Hot and cold baths are also provided, and at

any time during the day hot water may be obtained free of charge for cooking and cleaning purposes. Window blinds are provided by the trust; chimney cleaning is at its expense; and for each block of dwellings the trust provides a clubroom, furnished with a piano, and supplied with newspapers and other reading matter. All these advantages are peculiar to the Guinness buildings. None of the other building corporations attempt anything in the line of baths or continuous supplies of hot water, although in some of the Peabody buildings reading-rooms have been established.

At the end of 1893 there were 3,245 people in the Guinness buildings, and two other buildings were nearing completion. The average earnings of each family in residence were eighteen shillings and a penny a week. The average rent of each dwelling was three shillings and elevenpence farthing a week, and the average rent of each room two shillings and a penny farthing. The average rent of a room in a Guinness building is thus only one halfpenny a week less than the average rent of the Peabody rooms. The rent of a three-roomed dwelling in a Peabody building ranges from three shillings and sixpence to five shillings and sixpence; in a Guinness building from four shillings to five shillings. The Peabody Trust has no four-roomed tenements rented for less than seven shillings a week; while the Guinness Trust offers a number of four-roomed dwellings at five shillings and sixpence. In addition to this, the Guinness does much more for its tenants than the other dwellings corporations. To poor people who buy their coal in very small quantities and pay for it at something like one shilling and sixpence per hundredweight, the provision of hot water available at any time in the day for either cooking or cleaning can be made to mean a saving of sixpence a week.

The operations of all the dwellings corporations seem to have proved that it is not possible to erect buildings in which rooms of the size common in the London dwellings can be rented at less than an average of two shillings and a penny farthing a week. There is, as has already been shown, only one halfpenny a week difference between a Guinness and a

Peabody room, and a difference of only a farthing a week between a Peabody and a Waterlow room. Nor is it possible to note any very marked difference in material position between the tenants of the dividend-earning companies and those of the Peabody Trust. An examination of the tenant rolls of the Metropolitan Association and the Waterlow Company shows pretty much the same class of people as those scheduled in the Peabody report for 1865. The directors of the Waterlow Company, like the trustees of the Peabody and Guinness Trusts, give their services, only drawing dividends on their shares like any of the ordinary shareholders. They give considerable time to the work, for the Waterlow Company employs no contractors. For nearly twenty years past its colossal building undertakings have been carried out by the direct employment of labor under the supervision of its own staff. Long before the London county council set the example to London public bodies of doing away with the contractor, the Waterlow Company had successfully tried the experiment.

VI.

One method of dealing with the dwellings of the London working classes remains to be described. It is that adopted for thirty years past by the Marylebone Association, the aim of which is to improve the home surroundings of people whose conditions make it impossible for them to become tenants of any of the other dwellings corporations. As an association, it works in the quietest possible way. No immense blocks of buildings indicate the whereabouts of its activities. Its most active workers are women, best known among whom are Miss Octavia Hill, her sister, Miss Davonport Hill, and Miss Maud Stanley.

There has never been any element of charity in the work of the Marylebone Association. Its methods are widely different from those of the dividend-earning corporations; but it has always kept a five per cent dividend in view, and in most years has made it. The cardinal principle of the association

that it is best for both the working classes and the rich and leisured classes that as many as possible of the former should reside in Central London. For many years before the legislation of 1875 and 1877 permitted the pulling down of unsanitary property over large areas, the Marylebone Association was at work in the region of the metropolis from which it takes its name. A sum of about £60,000 was at the disposal of the association, and was used in buying up tumble-down dwellings and renovating them for the occupation of the existing tenants. The first care was to put the drains, the water supply and the roofs in good order, and the next, to set aside a considerable sum for yearly improvements. "I tell the tenants," said Miss Octavia Hill, in explaining her mode of procedure to a recent royal commission,

what that sum is, and I say "the more careful you are the more comfortable your house will be." I spend that sum and give them an account of it, and it has a most wonderful effect upon them. Steadily and gradually we improve the houses, quarter by quarter, with that sum; but the time comes when the tenants are a good deal raised, and after doing that we often take a bit of the court and rebuild it, because by so doing we can give better accommodation; and we still manage to pay either four or five per cent.

The Marylebone Association holds that there is reformatory as well as sanitary work to be done.

Our money is invested [said Miss Hill] not so much to construct new dwellings for the people, which is better done by the large societies, but to enable my fellow-workers by personal efforts to reach a lower class than the societies can touch. The great difficulty with these people is not the rentals; it is their destructiveness. My people, when I go among them at first, would destroy anything. They would kick out the door panels and burn the cupboard doors. We get hold of the people in poor houses and then in time build better ones. We succeed in reaching the very lowest class that has a settled residence.

How success has been achieved in this work was further explained in some detail by Miss Hill.

When I go in and buy a group of houses occupied by a low class, I go round next morning and collect my rents as anybody else would. I get to know a little bit who the tenants are. There are thieves and all sorts of people, and I go into underground rooms and all sorts of horrid places. I get to know these people, and I say: "I do not want this underground room used any more. I have a nice room at the top of the house. Will you not come up?" I do not frighten them, and they are not afraid of what they call "their bits of things" coming among people who would scorn them. I begin with precisely the same rents, because I do not want it to be a charity, and then I usually make a reduction in letting two rooms where they are wanted for the occupation of one family. The people we wish to work with would not go into the new dwellings; many of them would be frightened. They are very shabby, and we only get them clean by degrees.

In dealing with the poorest class what is always wanted, in Miss Hill's opinion, is some element between an official body managing the business and the tenants—an element which shall represent nothing in the way of gifts or charity, but which shall aim entirely at getting the people into better habits; and shall "unite the loving-kindness of the friend with the control of the landlord." Since 1865, Miss Hill and her association in Marylebone have been engaged on this line, and during that period they have brought at least 4,000 people under their influence and taught them to prize and appreciate home surroundings of the kind the association has placed within their reach. Only indirectly have the fifty years' work of the Metropolitan Association and the thirty years' work of the Waterlow and Peabody corporations touched these people. Nor were they reached by the more recently established Guinness Trust, which throws its net a little wider. They would never have been reached had it not been for the unique and real missionary work of the Marylebone Association.

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A NEW STATEMENT OF THE LAW OF POPULATION.

NO doctrine or class of doctrines in political economy has been criticised more severely or opposed more vigorously than what passes current as the law of population. This law is so intimately associated with the name of Malthus that it has become synonymous in the minds of most people with the term Malthusianism. An examination of the various current statements of the law as developed by Malthus in the various editions of his *Essay on Population*, amply justifies many of the criticisms made upon it. At the same time it reveals a singular lack of agreement on the part of so-called Malthusians as to the real basis of the law and as to the proof by which it is to be substantiated. Instead of a single law of population, determined by certain invariable conditions which are universally recognized, it is found that the statement of the law has repeatedly shifted its ground so as to give practically several laws of population; and at the same time the character of the proof advanced has changed to keep pace with the new formulations of the law. So unsatisfactory have many of the stock arguments proved, that nothing short of a restatement, in modified form, of the conditions under which the law is assumed to operate will serve to bring it into harmony with the present tendencies of economic thought. There are several distinct doctrines which lie confused in the discussion of the theory of population, each of which must have its consequences logically developed before the difficulties which now attend the discussion of the law can be cleared away.

The first proof advanced by Malthus depended upon the opposition between population and the food supply. On the one hand, the tendencies to populate being regarded as fixed and definite, there is a rapid increase in the number of the population which brings the members of the human race into

conflict with one another in their struggle for subsistence. On the other hand the food supply is regarded as limited. Under the influence of the tendency to over-populate, the race is constantly pressing upon the limits set by the production of food, and is always in imminent danger of being reduced to starvation. Such a formulation of the law of population has the great merit of being clear and easily comprehended. Unfortunately the proof of the law so formulated is by no means convincing or even logical ; and it is the weak character of the evidence adduced in support of the law that has strengthened its opponents in their opposition.

In the first edition of Malthus's work we see clearly the starting point of this discussion ; it is plain that the law was formulated as a result of meditation upon the opposition between population and food supply. Godwin, in his *Political Justice*, had advanced the same doctrine found in Condorcet's *Sketch of the Progress of the Human Mind*, in which is predicted the removal of all social and political evils, and the establishment of peace, virtue and happiness over the whole earth. Godwin attributed nearly all the vices and misery with which society is afflicted to bad government and bad laws. Reform these, he said ; do away with all the institutions that minister to oppression, both political and social : and society will naturally mould itself to an ideal state, where the spirit of benevolence, guided by justice, will distribute the bounteous fruits of the earth among all persons according to their several needs. It was such an ideal as this that Malthus wished to combat, and he sought to do it by calling attention to the opposition between the food supply and population, the desire for food and the desire for marriage being treated as two coördinate principles. His method of proof was as follows. In an ideal state the food supply of the whole world would soon be brought into requisition and there would be no possible chance for any further increase ; but the condition of the people would cause population to increase more rapidly than it does now, and in this way there would soon be a greater population than the food supply could sustain. Consequently he predicted that at the end of a short

period, perhaps not more than fifty years, the ideal society would be destroyed through over-population. It should be noticed that this argument has nothing to do with the actual condition of society, past or present. It merely relates to an ideal society ; and it must be confessed that this argument against Godwin is complete.

If we substitute for the scheme of Godwin the ideal of society more familiar to us in the present day, the vital point of the controversy can be more clearly seen. Bellamy in his *Looking Backward* has presented to us a scheme of an ideal society in which the present evils, political as well as economic, are avoided, and the highest form of social organization possible for us with our physical limitations is realized. While this scheme differs in many respects from that of Godwin, the points which the two have in common are numerous, and the arguments of Malthus are as pertinent to the one as to the other. Bellamy's scheme would also bring into requisition all the means of subsistence, and the argument of Malthus would have the same force here as against Godwin. In other words, Bellamy provides no means by which to care for any future increase in population after his ideal society has once established itself and all resources are fully utilized.

However cogent the arguments of Malthus may be against such schemes, it is unfortunate that the problem of the physical powers of the earth became confused with the problem of population. The question is not population *versus* the possible means of subsistence, but population *versus* the power in a given society to obtain subsistence. In other words the opposition is between population and its productive power. Useless and confusing also is the discussion of the natural rate of increase and the means by which this natural rate can be measured. The strength of the sexual passion is not a necessary premise in the discussion of the problem, though Malthus thought differently. Malthus was equally unfortunate when he endeavored to demonstrate the natural inequality between the productive powers of nature and of the human species, thus apparently making Providence responsible for the evils result-

ing from over-population. It is only too evident that when Malthus wrote his first essay he was influenced more by political than by economic considerations, or he would not have contended for the natural inequality of men. Godwin sought to make society responsible for all the evils from which we suffer. This is doubtless an exaggerated view ; yet the doctrine of Malthus that all our misery results from natural causes is equally far from the truth.

Before the publication of the second edition of his *Essay*, Malthus had subjected it to a careful revision and had added to it the results of foreign travel and wider reading. The change in the title itself indicated the changed character of the book and the new centre about which the discussion was now to revolve. The first edition was *An Essay on the Principle of Population as it affects the Future Improvement of Society*, thus relating directly to the ideal society which Godwin had in mind; the second edition is *An Essay on the Principle of Population, or a View of its Past and Present Effects on Human Happiness*. The future is no longer prominent; the past and present now come into the foreground. Malthus endeavors to show how in past ages and at the present time the misery and suffering in the world come, not from social and political oppression, but from the tendency to over-populate. The second argument introduced by Malthus depends upon the relative increase of population and of the food supply. Neither population nor the food supply is at its ultimate limit, but the ratio of increase is greater in the one case than in the other : while the food supply is increased by a given increment, population is increased to a still greater degree. Under such conditions, even though the whole food supply of the world is not utilized, there can be no other result than misery and suffering. The opposition now is between the physical qualities of the soil and the physiological qualities of men. The physiological qualities of men lead to a geometrical ratio of increase in population, while the physical qualities of the soil do not allow more than an arithmetical ratio of increase in the supply of food. The force of this argument is to emphasize Malthus's thesis that

present misery results from the tendency to over-populate. Population is constantly pressing against the means of subsistence, and no relief is possible which does not operate on and through the minds and habits of the people.

There is little justification for John Stuart Mill's attempt, more charitable than wise, to excuse in Malthus what he considered "an unlucky attempt to give numerical precision to things which do not admit of it," an attempt which was "wholly superfluous to his argument." As a matter of fact this particular argument was the only one that Malthus could at this time bring forward as a basis for his theory. With these definite ratios he was able to establish with respect to the present and past of human society conclusions identical with those concerning the future which he had arrived at by his first argument. Mill probably forgot that economic thought in the time of Malthus had not yet arrived at the formulation of the law of diminishing returns, which was later to modify in more ways than one the current economic doctrines.

It is at this stage of the discussion that a new argument was introduced which gave to the law a broader basis. This third argument depends upon the law of diminishing returns and is a result of the agitation concerning the ground leases of England, becoming prominent about 1815, when Malthus, West and Ricardo began to develop almost simultaneously the theory of rent. When this agitation had brought about its inevitable consequences, there was seen to be an opportunity for a stronger statement of the law of population than had been possible when the whole argument depended upon the difference between arithmetical and geometrical ratios. This new statement is put more clearly by Mill than by any other writer. The food supply has not definite limits, as would be the case in an ideal society; it is rather to be thought of as a quantity gradually increasing, but against a steadily increasing pressure. The obstacles to the increase in the food supply are not definite and fixed, but are likened by Mill to an elastic band, which stretches, but with increased difficulty, to meet the demands of the increasing population.

Like its predecessors, this last argument is conclusive only under given conditions. While the concept of society was merely a static one, a clear case could be made by the economists in favor of the law of population as formulated by Mill. But this argument fails if society is dynamic and the average return which the population obtains for its industry is increasing. The opponents of the theory of population have been able to turn the point of Mill's arguments by showing that the average condition of humanity at present is at least no worse, and in all probability is much better, than in the past. It is claimed that we are passing not from good to bad opportunities for labor, but from poorer to better. Under such conditions the law of diminishing returns would not be operative, and consequently the conclusions which Mill draws as to the evil effects of the increase in population upon the past and present conditions of society would not be true. In a dynamic state of society there would be no pressure of population upon the limits of the food supply for an indefinite period. So long as there is any uncertainty as to whether society is in a static or a dynamic condition, Mill's law of population is open to attack, and it is not difficult to show the weakness of his whole argument concerning the effects of an increasing population.

There is a fourth statement of the law of population which is even more extreme than the three we have thus far considered. This is traceable to the discussion relating to the wage-fund. According to this theory the formula "population depends upon food" is narrowed into "population depends upon capital." Industry is limited by capital and not by natural forces. Man and nature cannot create prosperity without the aid of the capitalist as an intermediary. Food is no longer looked upon as the gift of nature to man, but as the gift of one man to another. In order to procure food there must be not only nature to produce it, but man to save it. The growth of population is limited by the rate of increase of capital, and not by the natural rate of increase of food. The powers of nature to increase food cannot be fully exercised, because of the lack of the "saving" quality in men. As the mass of the laborers

lack this quality, their rate of increase depends not on themselves or on nature, but on the quantity of food which an outside class is willing to refrain from consuming. It is this concept of the law of population that has estranged the laboring classes from political economy and has given to recent socialistic literature a basis for its reaction from the old political economy.

Each of the four statements of the law of population which we have thus far examined can easily be shown to be defective. If political economy is to continue to make any use of the law of population, it is clear that this law must be re-stated in a manner more in harmony with the present tendencies of economic thought. The law must be given a new basis upon facts which are not open to dispute and which do not bring up in the mind of the reader the old bitter controversy aroused by the writings of Malthus.

The opposition to be harmonized is not between population and the means of subsistence, but rather between population and productive power. Productive power depends upon the intelligence of man and the efficiency of the social organization; and as this productive power increases, the food supply increases. Productive power thus determines the quantity of food that a nation can obtain, and this quantity of food stands in no necessary and unalterable relation to the total possible food supply which could be obtained by the greatest utilization of all natural resources.

Productive power is really the connecting link, the equalizing force, between population and the food supply; it checks the former and increases the latter. As civilization is the principle antagonistic to the law of diminishing returns, so productive power is the principle antagonistic to the law of increasing population. With the growth of those qualities in men which lead to an increase in the productive power, there is a diminution of the force of those passions which tend to increase population, thus gradually bringing about a harmony between population and food supply. In the primitive man the cruder appetites and passions are the strongest motives to action.

With the development of a higher type of man other pleasures become stronger and the natural impulses which come from the primitive appetites and passions are gradually subdued. A new society thus becomes possible, in which individuals act in a way that tends to secure a closer connection between population and productive power.

The value of food to a poor man, after his own wants have been satisfied up to a certain point, decreases so rapidly that the value of those increments of food necessary to the proper nourishment of his family is less to him than the value of other elements in his own consumption. He neglects his family to supply these personal wants. If the father's productive power is small, in order to satisfy his urgent wants he places his family in such conditions that they necessarily suffer, and as a result population is kept down. On account of a lack of productive power through which a larger income might be obtained, the father is often compelled to select a house in an unhealthy region, to provide his children with insufficient clothing and to deprive them of many of those conditions which go to make up a healthy life. Give such a man a greater productive power, and he will place his family under better conditions, where the effect of bad air, impure water and other detrimental causes will be less harmful than before, and as a result the number of surviving children in his family will be greater.

An increase in productive power does not increase the number of children born into a family, but it does increase the number of children that can survive in a family and reach maturity; and it is only through some change in the productive power which enables the members of a community to place themselves in a different and better environment, that an increase in population is rendered possible. In a primitive society population does not increase, or at least increases but slowly, and this fact is due to the choice of surroundings which men make. The bad physical conditions surrounding a family are the results of its limited productive power. Lack of productive power forces the family to put itself under these conditions

in order to satisfy its more pressing wants. The lack of productive power, therefore, and not deficiency in the food supply, is the cause of misery and vice. This may be illustrated by the case of early Philadelphia. In the first quarter of the present century population was more congested in particular localities than it now is, not because there was not ample food in and about the city, but because men of limited productive capacities placed themselves under such conditions that misery and vice were the necessary consequences. With the gradual increase in productive power in the city during this century there has been a rapid improvement in the condition of the average citizen, and as a result the greater population suffers less proportionally than did the smaller population at an earlier period, and misery and vice are reduced.

With a low productive power selfishness and the desire to satisfy immediate wants force the family almost necessarily into misery and vice. Even though the food were produced chemically at its present cost, so that the results of the law of diminishing returns could be avoided, the same causes would lead to misery and vice and check the increase in population. With a given productive power the people in a given region will act in a way that will lead to a certain amount of misery and crime. It may be true that only a few miles distant there are other conditions, permitting an increase in population which has no detrimental social effects, yet along with the choices which people are making with reference to their productive power, similar choices are being made in consumption, and the same vice and misery will prevail.

The new statement of the law depends, then, upon the opposition between different elements in man's nature, and not upon the opposition between man and external nature; and also upon the fact that an increase in productive power is due to subjective changes in man and not to objective changes in man's environment. The nature of man is gradually changing and new pleasures and powers are being developed, while accompanying these changes there is a constant increase in the productive power of individuals. With this influx of new qualities

there is an efflux of the old, and as a consequence there is possible a constant increase in population, accompanied by a constant diminution in the rate of increase. From this we arrive at the somewhat paradoxical conclusion that the tendency to over-populate leads, not to over-population, but to under-population. The truth of this paradox may be illustrated by means of the following table :

TABLE I.

	I	II	III	IV	V	VI
	Industrial Qualities.	Children Born in each Family.	Relative Quantity of Food produced.	Number of Children surviving in each Family.	Misery caused by Over-population.	Total Population.
A	1	8	3	$2\frac{1}{3}$	x	3 M.
B	2	7	5	$2\frac{1}{4}$	$\frac{2x}{3}$	5 M.
C	3	6	9	$2\frac{1}{2}$	$\frac{x}{2}$	9 M.
D	4	5	15	$2\frac{1}{2}$	$\frac{x}{3}$	15 M.

Let A, B, C and D represent four successive stages in the development of a society. In each stage there is an increase in the industrial qualities of the individuals in the society and a corresponding increase in their productive power. Stage A represents the primitive condition of this society, where its members have only one industrial quality, while later, in stage B they have two, in C three, and finally in D they have four industrial qualities. In stage A, where the industrial qualities are the most limited, the tendency to increase population will be greatest. The pleasures of the people will be few and inharmonious, while their appetites and passions will be little restrained by social and economic forces. In this stage there will be born (say) eight children to a family, in B seven children, in C six children and in D only five children. Every stage in the advancing civilization, accompanied by an increase in the number of industrial qualities, will open up new sources of pleasure and create new social forces through which the

strength of the primitive appetites and passions will be reduced. A new equilibrium will thus be formed between the primitive and the social elements in man's nature, and there will be a decrease in the tendency to increase population.

With each increase in the number of industrial qualities the power of the society to produce food will be augmented. We will assume that the relative increase of the food supply is indicated in the third column. On the same area three families can be supported in stage A, five families in stage B, nine families in stage C, and fifteen families in stage D. There will therefore be a fixed limit to the increase of population in each of these stages of progress corresponding to the productive power in that stage. When this fixed limit is reached, misery, disease, famine or other forms of social distress must carry off the redundant individuals and keep the population stationary in amount, until some new increase of productive power extends the possible limit of population.

The fourth column indicates the number of each family that survive until maturity and thus become the parents of a new generation. If the amount of the food supply is stationary, only two children can survive in the average family. The more dynamic the society and the more rapid the increase in the number of its industrial qualities, the more quickly can it advance towards the ideal state and the larger is the number that can survive in each family. In stage A, although eight children are born in each family, yet the society is so static that but two and one-fifth children on an average can survive. In stage B, because of greater intelligence and of a more rapid increase in the food supply, a larger number can survive in each family, say two and one-fourth children; in stage C, under still better conditions, perhaps two and one-third children survive; and finally in stage D the number of surviving children may reach two and one-half to the family. In short the actual increase in numbers will be greater in each succeeding stage, although the number of children born to a family will be less.

The pressure of over-population is measured by the difference

between the number born to a family and the number surviving. In stage A, where eight children are born to a family and but two and one-fifth children can survive, the pressure of population against its limits must be great enough to sweep off five and four-fifths children in each family, while in stage D the pressure is so reduced that a half of the children can survive. The standard of life can therefore be increased in each succeeding stage and the distribution of wealth will be more equitable.

The fifth column seeks to represent the misery which the tendency to over-populate creates in each stage of progress. If the misery and suffering of the average person due to this cause in stage A is represented by x , this average misery will be less in stage B, say two-thirds of x . In stage C it will be still less, say one-half of x , while in stage D it may fall to one-third of x . The detrimental influences of over-population are gradually reduced by social progress, and if there is great distress in an advanced society, it must be due largely to other causes.

The sixth column shows what will be the total population that can be maintained by the productive power during each of these stages of social progress. If stage A, with its limited productive power, can support three million people in the region occupied by the society, in stage B five million can be supported; while in stage C the number can be increased to nine million and in stage D to fifteen million. The social improvement in each succeeding stage is due on the one hand to the more perfect industrial organization which a larger population permits, and on the other to the reduced pressure of population.

Taking up the theoretical conditions which entered into Malthus's first discussion with Godwin, we might suppose that an ideal society having its industrial qualities fully developed could support sixty million people in a given region. The actual population, however, would stand in no necessary relation to this ideal number, and no calculation based upon the population which this ideal society could support would have any bearing on the actual population in any given stage of

progress, or enable one to determine the limit to the amount of population which a society with a given productive power could support. Knowledge of such ideal conditions would be of no aid in determining the welfare of the society at any given stage, or the social distress which the tendency to over-populate creates.

✓ No valid proof of the law of population can be based upon the relation between the primitive tendency of a society to over-populate and the purely physical conditions of the environment; nor are those arguments any better which seek to determine the pressure of population by the relation between the actual numbers in a given society and the ideal productivity of the soil when cultivated by an ideal society. The only sound arguments are those which connect the productive power of each society with its present tendency to increase in numbers. Through this comparison it will be seen that the pressure of population is greatest in the earlier stages of progress and that it is gradually reduced as society progresses. So long as a society continues dynamic, the less the tendency to increase population the more rapid can the growth of population be, and the greater the total population which a given region can support. Over-population is therefore relative and has its cause in social, not in physical conditions.

Viewing the problem of population from its social side, the checks to the increase of population must be arranged on some other plan than that proposed by Malthus. He recognized only the conscious restraints which act through individuals, and did not bring out the unconscious restraints which are operating all the while through social agencies. We see the vice and misery around us and feel within us the restraining influence of moral motives. They are indications that the natural inclinations of the individual are out of harmony with his environment. The vice and misery existing show that the will and reasoning powers of the average man are relatively weak in their struggle against the passions and appetites which he inherits from his primitive forefathers, while the need of moral restraints, even when these are most efficient, shows that

the surplus of pleasure over pain is still on the wrong side. Moral restraints in social affairs would not be needed if the pleasures which the environment yields to right actions exceeded the pleasure to be derived from actions out of harmony with the economic conditions of a given period.

The function of moral restraint is to give increased vitality to social ideals and thus to reduce the surplus of actions prompted by lower motives. It is at present strong enough to bring the actions of the higher types of men into harmony with these ideals; but the continued presence of misery, vice and other positive checks to population shows how incapable it is, when unsupported by the proper economic conditions, to reduce the surplus of pleasure derived by primitive men from wrong conduct below that given by right actions, more in accord with the social environment.

Fortunately our social progress does not depend upon these conscious checks to population. Even when we have no thought of limiting population, unconscious checks are developing in every dynamic society which in a natural way bring the actions of individuals into harmony with the welfare of society. Of these unconscious checks the economic causes raising the standard of life are most effective. For as the number of pleasures forming a part of this standard increases, the inclination to indulge in any one of them decreases. New complements of goods are also formed in a dynamic society with every increase of productive power and with every reduction of the appetites. These causes are aided by changes in our imputation of utility, by which we attribute less of the joint pleasure derived from a complement of goods to the older and cruder elements of the complement, and more to the newer elements. This, too, prevents disagreeable associations and increases those of an agreeable nature. The added pleasure which these new adjustments give to actions in harmony with the social environment makes it more natural and easy for individuals to do what is right, and thus lessens the need of conscious checks to population, whether in the form of vice and misery or of moral restraint. The causes which increase the

productive power of society also increase unconscious economic checks to population. Productive power depends mainly upon subjective conditions and every increase therein is the result of new mental powers, which modify the nature of man through the conflict between them and the primitive passions and appetites. Prudence and self-restraint are developed by the same conditions that increase the food supply. Productive power is therefore the equalizing force between population and the food supply. Whatever increases the latter must act as an unconscious check to the former.

The other powerful checks to population are sociological and physiological. These act unconsciously and with increasing force in each succeeding stage of a progressive society. Among the sociological checks, I include all those causes in society which keep men from feeling the force of their passions and appetites. Society throws around its members such restraints that they rarely become fully conscious of the strength of the passions within them; and only as they come under peculiar conditions where the normal restraints of society are not operative are they placed in an environment where they feel the full force which these passions can exert. In a progressive society the associations that arouse these passions decrease in number and disagreeable associations are more easily awakened which reduce their power and limit their activity.

The growth of these sociological checks is retarded by the freedom possessed by persons of a low moral tone to parade their vicious tendencies in public places and to corrupt public morals by creating improper associations. We try to guard virtue by putting it within walls, when the proper course would be to exclude from society the vicious element and enclose it within bounds, so that the innocent can enjoy public places without contaminating influences. The current of our thoughts would be purer if society became more homogeneous through the exclusion of the rougher element now at large. If society frees itself from the influence of these persons, it will be possible to root out many old habits and associations through which the passions are aroused. New habits and instincts would

prove safeguards against the bursts of passion which improper associations produce. In our social life we might become unconscious of our passions through the lack of associations to arouse them.

The artificial restraints separating men and women have much to do with the corrupt thoughts aroused by the presence of the opposite sex. Where convent life is an ideal for young women, the associations created by the presence of women relate to unbridled indulgence. Under these conditions a feeling of honor may protect a select few within given social circles, but isolated unprotected women are thought of as impure or as legitimate prey. Where, however, constant contact between the sexes is possible, a multitude of pleasant acts and events form the prominent features of social life and force into the background the morbid thoughts of isolated persons. Individually these new pleasures may not be so intense, but they form a harmonious complement of far greater power than the cruder pleasures they displace. A feeling of honor restrains men even in the presence of unprotected women, and the thought of taking undue liberties becomes repugnant to the finer feelings which the new relations create. These social feelings and pleasures greatly lessen the need of conscious checks to population and tend to create an equilibrium between it and the food supply.

The physiological checks are due to those physiological changes in men which reduce the strength of the primitive appetites and passions. Carey and Herbert Spencer have fully discussed the character of these changes and each has developed a theory to explain their origin. The mere fact, however, that there are such reductions of the passions and appetites is sufficient in this connection.

There are, then, three classes of unconscious checks which supplement those mentioned by Malthus. With each succeeding step in social progress their effects accumulate and make it much more easy and natural for the members of a higher civilization to do those acts which harmonize with the conditions of progress. First, the economic checks strengthen those

mental qualities which aid production, and favor changes in consumption which add to the pleasure of those forms of consumption that increase the welfare of society. Then, through the action of society, sociological checks are thrown around the members of a progressive society which make them less conscious of the passions within them. And finally, the physiological checks begin to operate through which the passions themselves are reduced and lose the power that they once had in determining the choices of individuals. In these ways, through the growth of economic, sociological and physiological checks to population, society is gradually getting itself into a better condition, where there is a greater harmony between the different sides of human nature. The opposition between the productive power of society and its rate of increase is lessened, while vice and misery cease to be a necessary consequence of social progress.

From the foregoing it can be seen that Malthusianism is not a term with a definite meaning. Under this head several important social doctrines have been discussed. The lines separating them from one another have been but dimly seen, and much confusion has resulted because the contending parties have not been fully conscious of what they desired to defend or to refute. The original dispute lay in the domain of theoretical politics about the possibility of an ideal state. The second was a practical contest relating to the causes of misery and vice. The first contest was between Malthus and the political reformers; the second between him and the moral and social reformers of his time. These moral reformers had no interest in an ideal society. Being religious in tone, they looked forward to a religious millennium in heaven and not to an ideal political society on earth. They were, however, firm believers in the perfection and harmony of natural law. They could not, therefore, accept a doctrine which implied an opposition between the natural tendencies of man and those of external nature, and made vice and misery the result of natural instead of moral causes.

In addition to these doctrines about human ideals, the Mal-

thusian controversy brought to light two very important doctrines about the benefits and evils of the tendency of population to increase. At first the discussion centred on the question whether or not the tendency to over-populate was an evil while so much of the earth was unoccupied; but finally the question arose, whether or not the tendency to over-populate leads to social progress by favoring the survival of the fittest. By the time this final proposition was fairly before the public the basis of the discussion was shifted from economic to biologic grounds. Malthusianism became Darwinism, and the economists were freed from any need of discussing the law of population as a special problem of their own science.

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LEGISLATION AGAINST FUTURES.

A DOLLAR per bushel for the farmer's wheat and flour for the laborer at three dollars per barrel, is the dream of the economic alchemist. To make this dream a reality, — to secure high prices for the producer and low prices for the consumer, — is to discover the philosopher's stone. That it still remains a dream is attributed by many not to the necessity of nature, but to the perversity of man. To these the first obstacle presented is the trader, bent on buying cheap and selling dear. He it is who seems to lessen the price to the producer and raise it to the consumer. Hence from the time when Mercury, the god of trade, was described as "a schemer subtle beyond all belief," the trader has been an object of popular suspicion. Producer and consumer alike grudge him the toll he takes. In recent years, however, this suspicion has been transferred from the trading body as a whole to a new class of middlemen, the speculators. Especially is this true of speculators in their particular capacity of "short-sellers." The feeling finds expression to-day in attempts to suppress the "short-seller" by legislation. This has been the aim of all the so-called "anti option" bills — the Butterworth Bill of the fifty-first Congress, and the Hatch and Washburn Bills of the fifty-second and fifty-third Congresses. While these bills have been almost unanimously opposed by leading bankers, merchants and manufacturers, they have received a strong popular support. This is due largely to the fact that the evils of speculation are apparent and have been made familiar to the general public through the press, while its benefits have been set forth only in technical trade or economic journals.¹

The authors of these bills, however, declare themselves as not opposed to what they call "legitimate speculation"; their

¹ See particularly two articles by Mr. A. C. Stevens, *Quarterly Journal of Economics*, II, 37, and *POLITICAL SCIENCE QUARTERLY*, VII, 419.

value arise only where the system of exchange is already developed. When every man produced for himself alone, he was forced to undergo risks of production; but only when he had begun to produce more than he wanted for his own use did he become subject to uncertainty in finding a market for his goods. The more extended the system of exchange became, the more important became this uncertainty. But the producer was soon relieved of the burden of risk thus created by the development of a distinct speculative class, which stood always ready to buy his surplus product and assume to itself the chance of gain or loss through possible changes in value.

This development did more, however, than shift the burden. It tended to make the risks themselves much less numerous. With the expansion of trade and the growth of intercourse among traders, many of the local influences affecting price became less important, while gains and losses due to such causes tended in the long run to balance. A moderate profit became assured to the average trader under average circumstances. At the same time the risks that remained became more and more important. Especially was this so in the trade in all the great agricultural products. No development of trade could remove the uncertainties of supply in regard to those products. And as the market came to be more and more extended, until with the development of steam transportation it covered the whole civilized world, the possibility of a total loss by some sudden unforeseen change in conditions became a constantly increasing burden to the mass of traders. An occurrence in some far corner of the globe, of which the small dealer could have no knowledge, might utterly change the course of prices on which he had relied to make his profits possible.

Thus with the elimination of petty and local risks and the increasing importance of the fundamental risks, the trading and the speculative elements in all business came to be more sharply distinguished. What was now needed by the trader, was a distinct body of men prepared to relieve him of the speculative element of his business, that is, of the risks of dis-

tant and future changes, just as he himself had formerly relieved the producer of his distinctly trading risks. And as the need grew,¹ the speculative class became differentiated from the trading body as the latter had been differentiated from the producing body. The importance of this development can hardly be overestimated. The striking feature is, not that speculation has increased, for that is but a necessary accompaniment of increased trade, but that speculation has become the business of a special class. Previously the speculators had been traders. They had been importers and exporters, seeking their own markets and moving their own goods. Now they became a third class, distinct from both producers and exchangers. Whereas formerly each man bore his own risks, the new class has arisen to relieve him of these risks. Instead of all traders speculating a little, a small class speculates much.

The speculator stands prepared to assume the ownership of a certain property at the prevailing price, and to take the risk of a fall in value in the hope of a rise. This form of speculation has always existed. But the modern speculator must do more; he must be ready to fix now a price which he will at a future time pay for a certain amount of some commodity. The business of the producer is precarious because the price that influences him to make his outlay may change; but if he can estimate what his produce is to be, he can find a speculator who will fix a price at which he will take it when the process of production is completed. Then if the price changes, the speculator bears the consequence. He has agreed to take the product at a certain price, and that price he must pay regardless of subsequent fluctuations. This speculator is a "bull." He speculates "for the rise." That is, he expects the price to rise and he assumes the risk of a fall.

¹ The fact that the system developed gradually as the need developed blinds many to the fact that there was any such need at all. It is all very well to say that no trouble was found in marketing the produce without this system forty years ago. It does not follow that the system is not needed now. Conditions have changed radically, and it is only within the last thirty years that the development of a world market has been possible.

The risk to an owner of property is that it will fall in value ; but for one who is postponing a purchase there is equal risk of a rise. A complete system of speculation must meet this risk also. And it does meet it by providing a speculator who will fix a price at which he will furnish the would-be purchaser with the desired commodity at such future time as may be stipulated. He too must accept the contract price, whatever the market price may be when the time for delivery arrives. This man is the "bear" — the "short-seller" He assumes the risk of a rise, while expecting prices to fall.

But such speculation is only possible where the necessary machinery has been developed. In the first place it can be carried on only in the case of representative goods. If a man buys or sells goods not yet in existence, the commodity in question must be of such a kind that every part of it is representative of the whole — is of equal value with every other part. The earliest organized speculation on a large scale was in the shares of stock companies, because of this very representative quality of the shares. The same quality is secured in grain and cotton by fixed classifications of different grades. The machinery for speculation in produce was developed from the practices of importers, those of England and Holland especially. They adopted the plan of issuing receipts (warrants) for goods deposited in warehouses, which receipts specified the grade of the commodity in question and passed from hand to hand as equivalent to the commodity itself. The commodity was deliverable to the last buyer on presentation of the warrant. But importers soon became unwilling to undergo the risks of changes of value while their goods were in transport. Accordingly there grew up the practice of selling goods "to arrive," and even "for shipment," *i.e.*, goods still in the exporting country. These however were sales of specific lots. The next step was for the importer to take the first good offer made him for the goods in which he dealt, deliverable at a future date, and trust to making the contract good by purchases through his agents in the exporting country. This was short-selling pure and simple, and was the one thing needed to complete the machinery of speculation.

The regulation of these facilities for trading in future products was taken over by the organized body of merchants in each community, out of which bodies have grown the great speculative exchanges of to-day. As trade increased, these facilities were rapidly perfected. Impartial grading and uniformity of contracts are the chief needs in such business, and these are now secured by an established classification of different kinds and qualities of wheat, corn, cotton and all other commodities so dealt in, and by official grading according to such classification by sworn inspectors. Warehouse receipts and elevator receipts (warrants) no longer represent the particular lot deposited, but are merely orders for a certain amount of a certain grade of the commodity named, payable on demand. These receipts are bought and sold as commodities and constitute a complete delivery on all contracts. Finally, the form of contract is stereotyped, all the conditions being fixed except the price and time of delivery, while elaborate provision is made for the quickest possible cancellation of debts and settlement of contracts.

With all details thus simplified, the two opposing forces in the speculative market face each other on an equal footing, relieved of the duties of ordinary trade. They have no care for the particular lots of any commodity, for storing or for transportation. They are left free to study by every possible means the influences that can affect the market for the commodities in which they deal, causing a rise or fall in price. That they are not concerned immediately with the goods that they buy and sell and cannot themselves distinguish the grades or qualities of such goods, is no reproach to them. Such knowledge is the business of traders. But these men are not traders; they are speculators, and they fulfill their function as speculators when, after full consideration of all knowable circumstances bearing on the future price of their commodities, they enter the market to sell if they expect a fall, and to buy if they expect a rise.

The speculators estimate the future demand and the future supply in order to ascertain as nearly as possible the future

price. On their estimate of future demand and supply they create a present speculative demand and supply, which determines the price of "futures," *i.e.*, the price at which the commodity in question can be bought or sold for future delivery. The price of "futures" is an anticipation of the actual future price. It is the market estimate of what the price is going to be at any given time. Thus in December there are certain indications as to what the condition of the wheat market will be in the following May; and the buying and selling by speculators establishes a December price for May delivery. It is a real price at which any person may secure the stock of wheat which he needs in May, or get rid of a stock which he will then possess; but it is also an estimate, the best that the market can make, of what the price of "cash" wheat will be when May arrives. That the estimate and the actual price are generally different, and sometimes widely different, is due to the impossibility of foreseeing all the influences that affect the price of a commodity. As speculation becomes more perfect, this divergence tends to diminish, but in the meantime it is what attracts men into speculation and makes their gains and losses possible. Ideal speculation would render a future price absolutely predictable, that is, would annihilate itself.

The bears, or short-sellers, represent the supply forces and the bulls the demand forces. Those who think the price of the commodity, say wheat, is going to rise, come into the market and buy, and those who are of the opposite opinion sell short to the buyers, hoping to fulfill their contracts by buying in at a lower rate. The equilibrium point of this speculative demand and supply marks the opinion of the market as to future prices. It will be seen that the speculative buyer and the short-seller are mutual checks on each other, the one being as much as the other a necessary part of such a system of speculation.

The establishment of this price for the future delivery of a commodity is the great service of speculation. We are wont to think of speculation as beneficial chiefly through holding back supplies in times of plenty for use in less prosperous

times. This is indeed an important service, but it is no longer performed immediately by the speculators. Since the production and distribution of commodities, as to both time and place, follow their probable values, speculation's great work is to fix these future values according to the most enlightened opinion of the most competent men. We may, then, sum up the function of speculation in produce as follows: It directs the production and distribution of commodities into the most advantageous channels, by establishing, at any particular moment, relative prices for different commodities deliverable at different times and places.

II.

We are now in a position to examine more intelligently the arguments advanced in favor of anti-option legislation.¹ Such legislation aims primarily at suppressing the short-seller. In the Hatch and Washburn Bills of 1892 the attack was made directly on the short-seller himself. It was the habitual and professional selling of what one did not possess that was held up as the evil to be suppressed. In the bills before the fifty-third Congress the attitude taken was different. Mr. Hatch seemed to repudiate his old opinions, and now made the test to be the "absolute sale and actual delivery" of the commodity. The reasons for this change were not clearly given. The new measure seemed to allow short-selling, and so nominally "obviated all the objections to the former bill." But just what *was* aimed at is not clear. Suppose a grain dealer

¹ The name anti-option has been given to these bills because they have been bills for the taxation of "options" and "futures." Futures, as defined in the bills, are such contracts as have been spoken of above, for the delivery of a certain amount of a given commodity at a future time. Options is the word applied by the framers of these bills to what are more commonly known as "privileges." These are the familiar "puts" and "calls." They are contracts whereby one party acquires the *right* to receive or deliver the commodity, but is not *obligated* so to do. Some confusion has arisen from the fact that the word option is commonly used in business as synonymous with "future," because the seller generally has an option as to what day in the stipulated month he shall choose for delivery. The question of privileges, however, is of comparatively little importance. It is only with the question of futures that we are here concerned.

sells 50,000 bushels of wheat for forward delivery. It is resold through a whole line of speculators till perhaps the twentieth buyer wants it for milling purposes. When the time for delivery arrives the elevator receipt may be sent through the whole line and cash paid on each delivery. But it saves trouble if a "transferable order" is passed along by which the last buyer may claim delivery direct from the original seller. The others settle their "differences." This is actual delivery as much as the other. In either case nine-tenths of the business has been speculative, and one-tenth for trade. Suppose now the original seller has changed his mind and wants to "hedge" on his first contract, or that the first seller was himself merely speculating. The last speculator in the line, instead of selling to the miller, sells to him. This forms a circle and settlement is made by "ringing out." What difference in principle is there in the two forms? Evidently none. One had a fraction of real trading, whereas the other was perhaps all speculative. But in all exchange business the dealings for differences and the dealings by *bona-fide* traders are so mixed as to be indistinguishable. If Mr. Hatch only aims at prohibiting a particular form of settlement, he will merely obstruct the easy working of the system without touching the principle involved. All contrivances that facilitate transfers and obviate the cumbrous methods of cash payments are a distinct benefit to trade.

But the real aim of the new measures is the same as that of the old, and the arguments made for the bills of 1892 have been expected to do service for these later ones. That this is so, is seen by the most cursory glance at the speeches and especially at the committee reports in favor of the bills. The wording is changed somewhat, but the real motive is the same. Though short-selling for business purposes has been admitted to be a necessity, the great extension of the system in the hands of professional speculators is still the point of attack, as being destructive of the welfare of the producing class. If this contention is not true, there is no more reason for passing the later bills than for passing the bill of 1892. The issue

then resolves itself into the question of the use of the short-seller in the organization of business.

According to the theory of speculation in the first part of this paper, short-selling is the last step in the development of a much needed machinery for the determination of future prices according to all the market conditions present and future. The short-seller represents the forces of supply, and can only represent a future supply by a present speculative supply. But apart from the nominal object of raising revenue, the first object of the Hatch Bill of 1892, as laid down in the report of the committee on agriculture,¹ was "to relieve the producer of the destructive competition to which he is now subjected by the offering upon the exchanges of illimitable quantities of fiat or fictitious products by those who do not own, and have not acquired the right to the future possession of, the articles which they pretend to offer and sell," or, as it is stated in the report² on the bill of 1894, "by those who do not intend to, and cannot, terminate the contract by actual delivery of the articles which they pretend to offer and sell." In either case the fundamental assumption is, that the great quantity of recorded sales, which perhaps aggregate many times the crop raised, are simply an enormous additional supply forced on a market in which the other forces of demand and supply have already attained an equilibrium.

It is however easy to be misled by figures. These recorded "sales" simply give the amount of transactions. If a lot of 10,000 bushels of wheat passes through ten hands within a week or month, the total transactions are recorded as 100,000 bushels. And they are recorded as "sales" even if the eagerness of the buyers has caused a rapidly rising market. These figures in themselves evidently do not signify anything as to the actual supply.

It is insisted, however, that "illimitable" quantities of "fictitious" products are actually offered, and that these offers must reduce the price. The proposition seems eminently

¹ 52d Cong., 1st Sess., House Rep., No. 969.

² 53d Cong., 2d Sess., House Rep., No. 845.

reasonable. There can be no doubt whatever that "illimitable supply" will break any market. But what has stopped the progress of the fall? The advocates of these measures have brought to their support¹ the principle laid down by Tooke, that an increase in the supply of grain regularly results in a much more than proportional fall in price. Therefore, when the distinguished senator whose bill was before Congress in 1892 shows that an amount of "fictitious wheat" fifteen times the actual wheat offered was poured into the market during that year, we look at once to the principle advanced and find that the price of wheat ought to stand at less than one cent a bushel. Still there can be no question of the validity of the principle itself; and the only explanation of this conclusion seems to be that the facts are not as stated. Certainly no one can seriously maintain that "illimitable" supplies of fictitious produce are, or can be, poured into the market by the short-seller. There is something that puts a limit on the supply and a check on the seller. What is it?

Again, let us consider the way in which the short-seller pursues his "nefarious business." We are told again and again that he makes the price to suit himself, and robs the producer of enormous sums. The process is truly startling in its simplicity. The bears merely contract to sell an illimitable supply of (say) wheat; this forces prices down, and then they cover their contracts at the lower price. The price is bound to go down; for if it shows any troublesome desire to maintain itself, they have only to keep on selling "wind" until the market breaks. Of course they reap the difference in price, and the more they have sold, the greater their profits. In this process the price apparently does not rise when the covering contracts are made. This is because, say some,² the wheat which the shorts *buy* is based on real holdings; or, say others,³ because they cannot really secure and deliver all the wheat, and so simply settle the contracts at the market price; or because

¹ See testimony taken before the committee on agriculture, 1892, p. 16.

² Cf. C. W. Smith, *Commercial Gambling*, p. 148.

³ Senator Washburn, *Cong. Record*, XXIII, pt. 6, p. 5986.

on general principles "the long-buyer is a less potent factor in the market than the short-seller." Whatever the cause, here is the fact, a sure and safe method of selling at one price, depressing the market, and buying in at a lower price, scoring the consequent profit.¹ With a description of this process as his *vade mecum*, the way of the speculator is easy and his profits far from light.

The legislators who see so clearly how they might thus take unto themselves the "hard-earned substance of the farmer," may seem to show a most praiseworthy self-abnegation in exposing the method and attempting to make it unlawful. But the men who have put this system into practice present a curious contrast to what we might expect of those who should take advantage of such a scheme. Of the many who have sold farm products short, not one in a hundred has grown rich; and even those who have been more or less successful do not show the boldness of men who have a "sure thing," with nothing to fear. If prices remain firm, these men do not rush in deeper and deeper, but draw out with all possible despatch. What is it, then, that men possessed of such "complete power over the market" have to fear?

Something has evidently been left out of account in this theory — something that keeps the price from falling below a certain point, despite the illimitableness of the supply, and that casts a shadow over the pathway of the covetous bear. The common answer to the charge that short-sales depress the price is, that every sale means a purchase, and that there is a speculative demand to meet the speculative supply; and the common idea has always been that the thing that makes the bear so nervous is the bull.

This proposition is greeted with ridicule by the anti-optionists, as "one of the oldest gags in the argument of the whole question." But they meet it with reasoning as well as with ridicule. They are doubtless right in denying that because the seller implies the buyer, and for every sale there is a purchase, *therefore* the contending forces are equal, and short-selling is always

¹ Cf. W. E. Bear, Market Gambling, *Contemporary Review*, June, 1894.

equalized by long-buying. The number of buyers depends, of course, upon the price, and buyers will be forthcoming if the price falls far enough. So, too, they are right in saying that the price may be depressed by a multitude of unaccepted offers. But though the increase of speculative supply, like the increase of real supply, may depress the price, the question whether it does so depends upon the strength of the demand. The assumption of the advocates of these measures is, that the demand depends for its strength solely on consumers and "real traders." That this is not the case is evident from the fact that prices have not fallen to an unlimited extent. As soon as the price falls to the point where speculators think it is below what the actual price is going to be, these speculators come in and buy. The bears cannot continue to sell "wind" indefinitely; for the purchasers become equally eager, and their purchases raise the price. Men are just as ready to make money from a rising as from a falling market. As a matter of fact, then, we see that there is a great fictitious demand to meet the fictitious supply, and the cause of the bear's fear is, after all, the bull.

When the Senator from Minnesota, then, argues¹ that the short-seller can of himself depress the price, whereas the owner of the property can only advance the price with the consent of the buyer, and that therefore "the 'long' is a far less potent factor in advancing prices than the 'short' in depressing them"; or that, "in other words, one man may and does put the price down, whereas it requires the concurrent action of at least two people to advance the price"—he does not meet the point at all. It is not the owner that opposes the short. It is the speculative buyer. The latter does not have to wait for any one any more than does the speculative seller. He can and does go into the market, bid for large quantities of the product, and thereby raise the price by his own efforts, exactly as the short-seller, by offering similar amounts, seeks with more or less success to depress the price.

Again, when the senator argues² in the next place that, even if the seller implies the buyer, prices are not determined by

¹ See Cong. Record, XXIII, pt. 6, p. 5985

² *Ibid*

such offers, because they are often manufactured by "wash sales," he says nothing of the fact that such sales may be used to advance the price. Nothing too severe can be said of the practice of "wash sales"; but they are no more an instrument of the bear than of the bull.

And when, in the third place, Senator Washburn holds¹ that the "fictitious" buyer is no support to the market, because he buys not actual commodities, but merely "contracts"; and is really a destructive influence, because at the approach of the time for delivery he rushes to get rid of his "contracts," and breaks the market by his liquidation — a similar contradiction is involved. In the first place, one is inclined to wonder why, if the short-seller cannot possibly deliver on his contracts, as we are so vigorously told, and would be in a deplorable state if delivery were demanded — why under such circumstances the buyer is so afraid that such delivery will take place and is so anxious to liquidate before the occasion arrives. But apart from this, it is evident that what is said of the long-buyer is equally true of the short-seller on the other side of the market. It makes little difference for this argument whether fictitious buying and selling have the same effect upon the market as real buying and selling or not; but surely the distinguished senator cannot hold that fictitious selling does have the same effect, as he maintains in denouncing the competition of the short-seller, and that fictitious buying does not, as he maintains in denouncing the influence of the long-buyer. In any case, what is true of the one is true of the other. If the anxiety of the long-buyer sometimes makes him a depressing influence, so the anxiety of the short-seller sometimes makes him an influence for the advance of prices. It is true that nothing will force prices down like a stampede of bulls in a rush to liquidate; but it is equally true that nothing will send prices up like a rush of frightened bears to cover their short-contracts.

That the short-seller does not control the market, is further made evident by the fact that prices of farm products rise and fall quite independently of the amount of fictitious transactions.

¹ See Cong. Record, XXIII, pt. 6, p. 5986.

If the influence of these transactions is on the whole to depress the market, the greater the amount of dealings, the lower ought the price to stand. But no such correspondence exists at all. Take, for example, the figures of three consecutive years, which illustrate what is true of the whole period since short-selling was instituted :

WHEAT FUTURES SOLD ON N. Y. PRODUCE EXCHANGE.¹

	Bushels.	Average price per year
1891	1,604,450,000	\$1.08
1892	1,079,713,500	0.89¾
1893	972,670,000	0.72⅞

The same is true of monthly and weekly sales and prices. The extension of fictitious dealings is seen to be in no way connected with a fall in price.

The advocates of anti-option legislation have certainly not made good their first and most important claim, that the extension of these fictitious transactions has put the market into the control of the short-seller. They find strong support, however, in the fact that the price of farm products, and of wheat especially, has suffered a great decline. On this they base a negative argument to this effect : Since the high price of wheat in 1882 there has been a steady decline of price, till now wheat is worth not much more than half what it was at that time ; there is no increase in supply to warrant this change, for the acreage of wheat lands has not increased in the last twelve years : therefore some "sinister causes" must be at work — causes that have arisen since 1882. The system of selling "illimitable fictitious products" has arisen since that time ; in it, then, we find the sinister influence that has depressed the price.

This is plainly in contradiction to the most familiar facts. In the first place, there has not been a steady decline in the price of wheat since 1882. The price fell for about five years, reacted after 1887, culminated in 1891, and since that time

¹ Figures of transactions are from *Bradstreet's* ; prices are from reports of produce exchanges.

has fallen off again in the most startling manner; we ought then to find corresponding variations in the "sinister cause." But the system of short-selling has steadily increased in importance without any such changes. Furthermore, the system was developed some years before 1882, and it was due to large fictitious transactions in that year that the Chicago price was kept above the price in other markets and higher than actual conditions warranted.¹ And thirdly, though the acreage and the crops in this country after 1882 showed no increase over the years just preceding, the fact was that America no longer made the price of wheat. All wheat-raising countries had come into the market, and the characteristic feature of the years after 1882 was an increase in the world's supply.² The conditions have again changed in this country, and the excessive supplies of the last few years, combined with Russian and (worst of all, because unexpected) Argentine competition, make it unnecessary to seek more "sinister causes" for the course of prices. As to the fall in the last few years, the following tables are instructive :³

TOTAL AVAILABLE STOCKS OF WHEAT IN THE UNITED STATES,
CANADA, IN AND AFLOAT FOR EUROPE, AND IN AUSTRALIA
ON THE DATES NAMED.

	Bushels.
July 1, 1894	154,000,000
July 1, 1893	157,000,000
July 1, 1892	102,000,000
July 1, 1891	89,000,000
July 1, 1890	74,000,000
July 1, 1889	68,000,000

¹ See "The Price of Wheat Since 1867," by T. B. Veblen, *Journal of Political Economy*, December, 1892.

² *Ibid.*

³ From *Bradstreet's*, July 7, 1894, and December 8, 1894.

DOMESTIC STOCKS OF WHEAT DECEMBER 1, WITH COMPARISONS.

In U. S. and Canada.	East Rockies.	Pac. coast.	Both coasts.
December 1, 1894,	113,116,000	14,582,000	127,698,000
December 1, 1893,	96,597,000	10,629,000	107,226,000
December 1, 1892,	94,671,000	10,415,000	105,086,000
December 1, 1891,	62,328,000	10,619,000	72,948,000
December 1, 1890,	44,843,000	12,361,000	57,205,000
December 1, 1889,	54,455,000	8,120,000	62,575,000
December 1, 1888,	51,394,000	6,476,000	57,871,000

And yet in the face of such conditions as these, we are told that there are absolutely no "natural causes" for the recent fall in price!

But suppose it be admitted that the short-seller does not control the market—that there are forces of equal strength on the other side devoted to the advancement of prices; have we then proved that the system is not reprehensible? Can we justify the determination of prices by this "juggling with the product of the farmer," even if it be as easy to juggle prices up as to juggle them down? This question was answered in the first part of this paper. The function of speculation was there shown to be the establishing of a price for future commodities. A means of fixing a price for future products would have been a blessing to trade at any time; but when, with increased facilities for communication and transportation, the market for the staple agricultural products became a world market, some such means became a necessity. Otherwise all trade would have been speculation.¹

The price for future goods, like any price, can be made only by buying and selling, and it depends on the demand and supply in respect to future goods. Let the farmer, then, fix the price,

¹ Space has not been taken in this paper to consider the particular ways in which risks can be shifted to the speculating class. The most familiar of these is the practice of millers, elevator men and exporters, in "selling against" the stocks which they hold or export. The advocates of these bills say that this practice can still be continued under the new régime, overlooking the fact that it would not be possible except for organized speculation in the hands of a special class. An excellent account of the method is given by Mr. A. C. Stevens, in an article already referred to, *Quarterly Journal of Economics*, II, 27.

say the anti-optionists. Why should he be "despoiled of that voice in fixing the price of the product of his labor and capital which is accorded to other producers"? But the prices determined by speculation are prices for future goods and are made by transactions based on probable future conditions. These conditions are purely matters of estimate, and the farmers as a class are not able to weigh the numberless influences which may affect the future market for their commodities. Only those men who have great experience, wide knowledge and the most improved means of obtaining information, combined with cool judgment, courage and the faculty of quick decision, are competent to forecast the course of future prices and forestall the probable event by their own purchases and sales. And it is the great speculators who combine these qualities in the greatest degree.

When, therefore, the distinguished sponsor of the Senate bill charges the exchanges of the country with being mere "price factories," the exchanges may well admit the truth of the charge. That is just what they ought to be. We have seen that by making prices which express the opinion of the most intelligent men, they direct production and distribution into the most profitable channels. Through these "price factories" the intelligent farmer is enabled to market his crop with greater profit and less danger of loss than would be possible if the old system were applied to modern conditions. On the other hand it may be that the shiftless and dull are affected as such persons are in all walks of life by the adoption of more intelligent methods by their competitors.

The main charge, however, is that these prices are made regardless of the law of supply and demand. The objects of the House bill of 1894, as stated in the report of the committee on agriculture,¹ were "to restore to the law of supply and demand that free action which has been destroyed by the practice of 'short-selling'"; and to afford relief "by restoring the functions of the law of supply and demand now inoperative by reason of the limitless offers of the short-seller"; and still

¹ 53d Congress, 2d Sess., House Rep., No. 845.

further, "to restore to the producer an honest market and such prices as will follow the unfettered action of the law of supply and demand." Similarly, in the speeches made in support of such legislation great stress is laid on the iniquity of an infringement of this law.

From the standpoint of the anti-optionist the law of supply and demand is a moral law. He holds that prices ought to be determined by supply and demand and that it is wicked to determine them in any other way. He fails to see that the "law of supply and demand," like any economic law, is merely a statement of facts. If it is no longer a true statement, then it is the law and not the facts that must be remodeled. Neither Congress nor the merchant body is called upon to "restore" the law to its former place.

Both the advocates and the opponents of such legislation, however, will agree that the speculative supply and the speculative demand do determine the speculative price, *i.e.*, the price of futures. The real point at issue is, whether this speculative supply is determined by actual conditions. If not, the function of speculation as a means of forecasting the market is not fulfilled, and its economic benefit is hard to see. The enemies of the existing system, however, in denying that prices are determined by actual conditions, confuse actual conditions with physical conditions. They take the mediæval view of price as an objective something, springing full-fledged from a physical supply and a definite demand. Seeing that prices are not wholly determined by the existing stock of a commodity compared with the amount wanted for immediate consumption, they come to the conclusion that "demand and supply are inoperative." It is evident, however, that even the demand for "cash" wheat will not be determined by the stock on hand at any particular time, and never was so determined under any system. As long as men are able to postpone their purchases or sales, they will carefully consider the conditions in different places and the chances of changed conditions in the immediate future, before deciding what their transactions shall be and at what rate they shall be made. Supply does not mean the

stock in existence, much less the amount of a given crop, nor demand the amount that can be used consumptively. They depend on mental operations — on opinions held in regard to numberless facts that may affect the market.

But if the price of present goods is purely subjective in its determination, depending on the knowledge of certain facts and suppositions as to others, much more is this true of the price of future goods. The question, then, is not whether speculative prices are determined by the existing condition of a physical supply, but whether they are determined by the most intelligent suppositions regarding future supply and demand. If this is true, the speculative price will approximate as closely as possible to the actual future price, and the real work of speculation will be accomplished.

That this is the case is evident from the effect on the market of every piece of news, at all authenticated, affecting future supply or future demand. Good weather in Dakota, the repeal of an export prohibition in Russia, cheapened transportation from India, a cessation of hostilities in South America, — all these and numberless minor events pointing to a fall in price, bring out an increase in speculative supply. While a frost in Kansas, a drought in India, the appearance of grasshoppers in Iowa, the chance of a "car famine" in the United States, or the rumor of a war in Europe, — all occurrences, in fact, that point to a rise in price, call out an increased speculative demand. We should not be misled by the large transactions based on a single crop. So long as men keep changing their opinions with every change in news, a crop will be bought and sold many times over, but from this no harm necessarily results to the producer. The speculative supply increases when an increase is expected in the actual future supply, and falls off when the indications point to a deficient future supply. In the same way the speculative demand varies according to the expected changes in the actual future demand. However much Congress would like to regulate the prices of future goods, those prices are and must be regulated by the estimate men put on the future supply and demand.

But opinion alone cannot affect prices. Opinion must be backed by offers to buy or sell. Here arises the possibility of a serious evil. All the indications may point to a certain result, and yet speculators may be frightened out of making transactions on the basis of these probabilities by the action of a few men. If two or three dealers of known ability and financial strength persistently sell any commodity, say wheat, in the face of "bullish" indications, they may succeed in causing a fall in price. This is simply because the bull element is not very confident itself as to the realization of the predicted conditions, and because it fears the shrewdness and strength of these operators more than it trusts the predictions. Here is a clear case of "scare," and as a consequence the market is "manipulated" by the stronger party.

That prices are sometimes thus manipulated, possibly to the great detriment of the trade at large, is beyond question. But let us consider the result. On the one hand actual conditions may prove the short-sellers to have been right in anticipating an unexpected large supply — in which case they have only put the price where it ought to have been, and, however selfish their motives, have performed a distinct economic service and reaped the reward of superior sagacity or luck.¹ But it may be that subsequent events prove that the price made was too low. In this case the low prices are only temporary. As soon as the real conditions are known, the price will rise. The shorts may prove shrewd enough to cover all their contracts before this time arrives, but in almost every case the tide turns too quickly and their frantic attempts to cover before it is too late only aggravate the result. The price goes up (probably

¹ At the time that the anti-option measures were being agitated in 1892, there was still much excitement over the then recent action of Mr. Pardridge, of Chicago, in selling large quantities of wheat and keeping the price down in the face of the unanimous opinion of statistical authorities that there was to be a shortage in supply. This seemed a flagrant case of unwarranted depression of price. Mr. Pardridge, however, happened to be right. It was later admitted by the same authorities who predicted a shortage that there was wheat enough and to spare; and that Mr. Pardridge, whatever he thought he was doing, had only "made" the price what it ought to have been. See "The Utility of Speculation" by Mr. A. C. Stevens, *POLITICAL SCIENCE QUARTERLY*, VII, 419.

to an extreme in the other direction), and the shorts are bankrupted because they attempted a manipulation that was not warranted by actual supply and demand. They sold their "wind" and they reaped the whirlwind. There has been a temporary disturbance of prices, and those who could not postpone their dealings have suffered thereby. Then equilibrium is restored and normal business continues.

But the fact that these manipulations are the exception and are only successful when in agreement with actual future conditions, does not make them a matter of slight concern. To what, however, is the evil due? Not to any lack of restriction, but to a lack of competition. It is not the speculative machinery that causes the evil, but something that obstructs its working. Instead of keen competition on the side of the bulls, and the ready buying that is warranted by the facts of the case, we find a weak surrender to the bear forces. What is wanted to stop bear manipulation is not statutes, but bull intelligence and courage. But manipulations are not always attempted for the purpose of lowering prices. At times the price may be put above its normal point by just such tactics as we have described. In this case the cure lies in strong action by the bears, *i.e.*, by vigorous short-selling.¹ Here the restrictions proposed would prove disastrous. If the short-seller is suppressed, the competitive action of the market is destroyed, and the chief obstacle to corners and bull manipulations of all kinds is removed.

All speculation is in a sense manipulation. It is by the equalization of the manipulation on the opposite sides that the correct price is fixed. The evils arise when the manipulation of one side is not equalized by that of the other. The more perfect the speculative system, the less likely is an unwarranted influence by either bulls or bears, and the less possible does all manipulation become. Not only is this true theoretically, it is

¹ When short-selling has gone too far, that is, when the market is "oversold," we have the best condition for a corner. This means that the shorts have sold more than they can deliver, and as is always the case with those who act contrary to actual conditions, have wrecked themselves in consequence.

true historically. It is a common saying that only a rash man will to-day attempt to corner the market. And though corners are still attempted and manipulations of various kinds are occasionally successful, the possibility of such success is constantly decreasing as speculation becomes more and more extended and more perfectly organized. Great evils there must be, for there are great evils in all competitive business, and in speculation the good and the bad elements of ordinary business are intensified. In the speculative field, as in all industry and trade, mistakes of judgment, due to imperfect knowledge and limited intelligence, cause disaster and loss. The remedy for the evils of competition is no other in the case of speculation than in the case of other business. It is to be found not in outside interference with the machinery of speculation, but in the growing knowledge and intelligence of the speculative class.

III.

The purpose of this article has been to show that anti-option legislation is a blow at an essential part of the modern machinery of commerce. It is avowedly an attempt to suppress the short-seller, on the ground that he regularly depresses prices regardless of supply and demand, and thus deprives the farmer of a fair price for his product. If the position taken in this article is correct, the short seller has no such influence on price, but is, on the contrary, a necessary part of the speculative system. Under this system prices are determined by the keenest competition of rival dealers. This involves all the evils of business strife under a competitive régime. But no other way of making prices than by competitive buying and selling has yet been devised. The advantage of such determination of the prices of future goods is, once more, that it relieves ordinary trade of its speculative element, concentrating the risks on a single class; while by this means the widest knowledge and keenest intelligence are brought to bear on the direction of productive and distributive forces into their most advantageous channels.

That there are enormous evils in speculation as carried on to-day, in stocks even more than in produce, is beyond all question. It is a desire to see these suppressed that has given popular support to the Hatch and Washburn bills. But these bills strike at the benefits as well as at the evils of the system. The problem of checking the evil while retaining the good is one of the gravest questions with which the people may soon be called to deal. These evils are, in the first place, those arising from the low plane of morality among many brokers and speculators. The system is honeycombed with corrupt practices. The mad desire to turn the market in one direction or another leads to tricks and deals of every degree of dishonesty. "Wash sales," irresponsible "curb-trading," affiliation with bucket-shops, rumor-mongering, the secrecy in regard to "unlisted securities" on the stock exchanges, and the scandalous inside manipulation of such securities — these and other practices are a disgrace to the exchanges which permit them to flourish. They are, however, due not to the system, but to the dishonesty of men. How far government intervention would prove a benefit is a grave question. The duty lies primarily at the door of the able and honorable men who form the best element in all the exchanges. If these men cannot control the evils, we may find a repetition of the experiences of the "Granger" railroad legislation. That legislation was costly and disastrous, but it taught the lesson that the people can and will interfere. Whatever the legal status of the exchanges may be, economically they are quasi-public institutions, and as such have public duties. It would be lamentable for them to remain blind to these duties so long as to bring down unreasoning Populistic legislation on their heads.

The other great evil of speculation is its extension throughout the country. It is not the great speculators, but the numberless small speculators, who are the social curse. The record of defaulting cashiers and trustees that comes up from every corner of the land, shows how far this evil has extended. To what extent, however, the evil can be overcome by legislation is another serious question.

These questions are assuming great practical importance in Germany, where a recent imperial commission has investigated the whole subject of speculation. This commission is emphatic in its recognition of the commercial necessity of dealings in futures (*Terminhandel*) and of the machinery to make such dealings possible. But it aims at suppressing the real evils of which we have been speaking, without destroying the system itself. Governmental supervision of exchanges is recommended as a possible check on dishonest practices. The interests of the investing public are to be represented on the managing boards of the stock exchanges, and the interests of the producing class on the produce exchanges. All persons trading through brokers on the produce exchanges are to be registered, and brokers are to be held liable for trading for any person not so registered. Speculation in behalf of clerks, officials and employees is to be strictly forbidden; also speculation for any one whose solvency is known to be endangered by the transaction. Brokers guilty of breaking these regulations are to be liable to expulsion or even imprisonment.¹

The commission itself was by no means unanimous in its belief in the efficacy of such regulations, if put in practice. Still more may the practicability of such paternal measures in this country be doubted. But if a blow is to be struck at the evils of speculation, a lesson may well be learned from the report of this commission. The projected German reform aims at correcting the evils, while recognizing the benefits of the speculative system. The projected legislation in this country embodies a blind attack on the important economic functions of the system. The former effort must arouse universal sympathy. The latter can only call forth opposition and alarm.

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¹ Bericht der Börsen-Enquete-Commission, Berlin, 1893.

MUNICIPAL ELECTRIC LIGHTING IN CHICAGO.

THE electric-light plant operated by the City of Chicago had its origin in an attempt to mitigate the "bridge nuisance." Ex-Mayor John A. Roche, in a letter dated June 3, 1887, proposed to the city council the establishment of an electric-light plant for the purpose of lighting the river from Halsted Street to the lake by arc lamps, in order that the bridges might be kept closed during the day, and be opened for the ingress and egress of vessels only from midnight to six A.M. In accordance with this suggestion, the city council, after due consideration, ordered the necessary steps for such purpose, and a plant operating 105 arc lamps, placed along the river according to the instructions contained in the ordinance, was installed at the corner of Washington and Clinton streets, on December 24, 1887.

While the project of lighting the river was still under consideration, the extension of the system was proposed. Out of this proposal and the discussion which followed grew an order, passed October 24, 1887,

that the superintendent of the fire alarm telegraph prepare and submit to the city council within two months an estimate of the cost to the city for procuring the necessary plant and supplying electric lighting by the year for the streets and population between the lake, Halsted Street, Chicago Avenue and Twelfth Street.

The idea indicated in this order has been gradually put into practice so far as the lighting of the streets is concerned, but the city has not yet undertaken to supply light to private consumers. The gradual extension of the system may be seen from the numbers of lamps operated in successive years : 1887, 105 ; 1888, 297 ; 1889, 669 ; 1890, 929 ; 1891, — ; 1892, 1027 ; 1893, 1110.

At the close of the year 1893, Superintendent John W. Barrett made a detailed analysis of the expenditures durin

the year in operating the 1110 arc lamps which were maintained by the city. Mr. Barrett is in charge of the city telegraph connected with the fire department of the city, and by virtue of that fact exercises a general superintendence over the city's electric-light plant. His analysis, an abstract and *résumé* of which is published in connection with his report to the fire marshal of the city for the year 1893, is concerned only with the money outlay of the department, and fails to take into account the various items of superintendence and office expense, water expense, interest, taxes, insurance and depreciation. Concerning the last item Mr. Barrett writes, in a letter addressed, under date of June 5, 1894, to Major H. Elliot, Colonel of Engineers, U.S.A., Washington, D.C.:

In regard to depreciation I beg leave to state that in a city like this it is extremely difficult to arrive at any fair percentage which should be charged up for depreciation. As one example why it is difficult, I refer you to page 151 of the report [of the fire marshal for 1893], where you will find that we disposed of a building, engines, dynamos and other apparatus at cost price (after they had been in service several years), and the land on which they were located at about twenty-five per cent more than its cost price.

We *must* keep all of our apparatus in good working order, so that it is practically as good as new; so taking everything into consideration, we do not allow anything for depreciation.

What is said in this extract about the sale of apparatus at cost price is true enough, but it is somewhat disingenuous; for the plant there spoken of was condemned at the instance of the Metropolitan Elevated Railway Company of Chicago, and sold to them for the purpose of completing their right of way. It is evident that the consideration received from such a sale offers no very sure index to actual value. When it is borne in mind that dynamos of the best patterns known ten years ago are to-day worth little more than their value as old iron, and that within the last four years there has been a fall of at least twenty or twenty-five per cent in the price of such apparatus, it is evident that some allowance should be made for depreciation. Competent engineers and managers of electric

apparatus — men acquainted with both the sale and the management of dynamo-electric machinery and with electric lighting — agree that the minimum depreciation ought to be estimated at ten per cent per annum, and that for steam-generating apparatus and engines the allowance for depreciation should be at least five per cent per annum.

It is the purpose of this paper to make allowance for the various neglected items before-mentioned, and thus to get an estimate of the cost to the city of its electric lighting under municipal management, in a proper form for comparison with the cost under private management.

The expenditure for coal at the four power-stations operated during 1893 was \$28,509.87, or a monthly average of \$2,375.82. The coal used ranged in price from \$3.50 per ton for Hocking Valley nut to \$1.65 per ton for Indiana block screenings. Estimating the average value at \$2.50 per ton, and the evaporating power at seven pounds of water per pound of coal, the average monthly consumption of water would be 1,592 M gallons approximately. The city charges for water supplied in such quantities 10 cents per M for the first 165 M gallons and 8 cents per M for all used after the first 165 M. At this rate the value of the water evaporated by \$2,375.82 worth of coal at \$2.50 per ton, is \$130.65, or five and one-half per cent of the value of the coal. At this rate the allowance for water consumed during the year should be \$1,567.92, or an average of $\$1.41\frac{6.82}{1110}$ per lamp per year.

The value of the plant, as given in the letter to Major Elliot before referred to, was, on December 31, 1893, \$688,312.80. At about the beginning of the construction of this plant the credit of the city was such that a large issue of 3½ per cent bonds was sold at $102\frac{7.8}{100}$. Assuming that a smaller 3½ per cent issue of, say, the value of the plant, might have been floated at par, the allowance per annum for interest should be \$24,090.95, or an average charge per lamp of $\$21.70\frac{3.95}{1110}$ per annum.

The aggregate of city, county and state taxes levied in Chicago amounts to nearly eight per cent per annum of the

assessed value. The assessed value is estimated to be about one-tenth of the market value. Estimating the taxes, then, at three-quarters of one per cent of value, the tax charge on the electric light plant for 1893 would have been \$5,162.35, or an average per lamp of $\$4.65\frac{0.85}{1110}$.

The value of housed property, as given at the close of 1892 in the comptroller's report for that year, was :

Buildings	\$66,987.13
Steam plant and tools	95,518.79
Dynamos	58,075.00
Supplies on hand (1893)	8,840.40
Total	<u>\$229,421.32</u>

Estimating fire insurance premium on this at one and one-half per cent on half valuation, an allowance of \$1,720.66 should be made for insurance, or $\$1.55\frac{0.16}{1110}$ per lamp per year.

The depreciation on \$95,518.79 worth of steam plant and tools at five per cent per annum would be \$4,775.94, or an average of $\$4.30\frac{2.94}{1110}$ per lamp per year. The electric plant included the following items :

Dynamos (1892 invt.)	\$58,075.00
Lamps (1893 invt.)	41,241.77
Underground circuit (1893 invt.)	164,495.20
Conduit system (1893 invt.)	152,552.91
Total	<u>\$416,364.88</u>

At ten per cent per annum, depreciation would be \$41,636.49, an average of $\$37.51\frac{0.89}{1110}$ per lamp per annum.

To Mr. Barrett's reported expenditure of $\$96.64\frac{7.53}{1110}$ per lamp per annum there should then be added the following items :

Water	$\$1.41\frac{6.82}{1110}$
Interest	$21.70\frac{3.95}{1110}$
Taxes	$4.65\frac{0.85}{1110}$
Insurance	$1.55\frac{0.16}{1110}$
Depreciation of steam plant, <i>etc.</i>	$4.30\frac{2.94}{1110}$
“ “ electric plant	$37.51\frac{0.89}{1110}$

The total is \$167.78⁰⁴⁴₁₁₁₀, which is nearly the proper amount for comparison with the cost of electric light furnished by private companies. This amount ought to be increased by the average expenditure per lamp per year for book-keeping and other office expenses, and diminished by the average increase in valuation of real estate per lamp per year, and the accrued interest on the allowances for depreciation. As the allowance for depreciation per lamp per year in this computation is \$41.82, the interest on it ought nearly to balance the office expenses, and our total expense of \$167.78 would then have to be reduced only by the average increase in the value of real estate per lamp. As no satisfactory means of determining this is at hand, it is impossible to say just what allowance should be made; it could hardly be more than \$2.78 per lamp per year, however, so that we may quite safely conclude that the total expense to the city for each lamp it operated in 1893 was at least \$165.00.

For arc lamps rented of various lighting companies of the city \$175 per lamp per year was paid in 1892, and \$137.50 per lamp per year in 1893. The estimated cost to the city of the lamps operated by the city plant in 1892 was given in the comptroller's report for that year as \$102.50; this presumably was obtained in a manner similar to that by which the estimate of \$96.65 was obtained in 1893. As the plant operated in 1892 was nearly as valuable as that operated in 1893, and the number of lamps (1,027) somewhat less, the actual expense in 1892 must have been rather more than \$171 per lamp. It is thus extremely doubtful that the city has saved any money by operating a plant of its own prior to 1893, and it seems very probable that the expense of operation in 1893 considerably exceeded the amount paid for hired lamps.

This, however, is not saying that the experience of the City of Chicago goes to show that the municipal operation of electric light plants is necessarily uneconomical. It is impossible to say just what influence the fact that the city owns and operates an electric-light plant has had upon the rates demanded by private companies for city lighting; and further than this, the

full utilization of the city plant would materially reduce the expense per lamp operated.

To estimate the reduction in the expense per lamp secured by the full utilization of the plant, I have proceeded thus: The aggregate horse-power of the steam engines used in the various plants in 1893 was as follows:

Plant No. 1 . . .	500
No. 4 . . .	425
No. 6 . . .	625
No. 8 . . .	375

The number of lamps operated from these various plants was:

No. 1 . . .	350
No. 4 . . .	307
No. 6 . . .	354
No. 8 . . .	99

The expenditures at these various plants were, including computed value of water consumed (computation being effected by adding five and one-half per cent of the value of the coal consumed):

No. 1 . . .	\$33,636.67
No. 4 . . .	27,676.28
No. 6 . . .	34,227.01
No. 8 . . .	13,305.89

Assuming that these expenditures may each be divided into two portions, one of which is proportional to the capacity of the plant, the other to the number of lamps operated, the first being represented by $\$a$ per lamp, and the second by $\$b$ per lamp; and assuming further that we may take the lamp capacity equal in number to the horse-power capacity, we have, taking approximate values of expenditures, $\$(500a + 350b - 33637)$ as the error for given values of a and b in the case of the first plant. Now, making use of the rule of least squares, we have that those values of a and b are to be preferred, which make

$(500a + 350b - 33637)^2 + (425a + 307b - 27676)^2$
 $+ (625a + 354b - 34227)^2 + (375a + 99b - 13306)^2 [= \phi(a, b)]$
a minimum. In order that $\phi(a, b)$ may be a minimum, $\frac{d\phi}{da}$
must = 0, and $\frac{d\phi}{db}$ must = 0.

$$\frac{d\phi}{da} = 1,923,750a + 1,127,700b - 109,924,850.$$

$$\frac{d\phi}{db} = 1,127,700b + 703,732b - 67,406,268.$$

Putting $\frac{d\phi}{da} = 0$, and $\frac{d\phi}{db} = 0$, and solving for a and b , we get
 $a = 16.365686 +$, and $b = 69.581953 +$, thus making a total cost
per lamp per annum of \$85.95 when plant is fully utilized, and
only water expense is included besides those items taken into
account by Mr. Barrett. These empirical values, when applied
to the case of 1893, give a total expense of \$105.97, too small
by an average of a trifle less than 9½ cents per lamp. If the
result \$85.95 be increased by 10 cents, we shall then have
\$86.05 as the cost per lamp per annum, exclusive of interest,
taxes, insurance, depreciation, office expense, change in value
of real estate and interest on depreciation allowance.

To secure this complete utilization, I have estimated that
the plant would have to be increased as follows :

810 posts, hoods, &c., @ \$55.00 . .	\$44,550.00
100-light dynamo, ¹ " \$22.91⅔ . .	2,291.66
700 lamps, ¹ " \$27.9793 . .	19,585.53
Total	\$66,427.19

This would involve the following increased charges :

Interest on \$66,427.19, @ 3½ % per annum .	\$2,324.96
Taxes " " " ¾ of 1 % per annum	498.20
Depreciation on \$21,877.19, @ 10 % per annum	\$2,187.72
Insurance on \$2,291.66, @ ¾ of 1 % per annum	17.19
Total	\$5,028.07

¹ Prices at which the Western Electric Co. recently contracted to supply
Detroit.

The previous total estimate for interest, taxes, insurance and depreciation, \$77,386.39, being increased by \$5,028.07, gives \$82,414.46, the total estimated allowance for these items in case the plant were to be fully utilized. This sum divided by 1,925 gives \$42.813 per lamp per year; \$86.05 increased by \$42.81 gives \$128.86 — a value probably very close to the expense per lamp per year if the city plant were to be fully utilized. This, in comparison with \$167.78, shows the saving that is to be effected by fully utilizing the plant.

Disinterested electricians and engineers with whom I have talked seem to be of the opinion that the plant is efficiently managed. Business principles seem to be observed in the maintenance of the *personnel* of the force, and although there is some slight reason to think that the finger of the alderman can occasionally be seen in the appointment of the less skilled workers, such as firemen, linemen and laborers, I have not heard it asserted that the efficiency of the force is thereby impaired, or that inefficient men are retained on account of the manner of their appointment.

The only questionable part of the management so far discovered is the practice of inventorying all property at cost price, thus omitting all consideration of depreciation in efficiency of apparatus and further depreciation of value on account of fall in price, and presenting the appearance of greater wealth on the part of the city than it actually possesses.

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KOSSUTH: A SKETCH OF A REVOLUTIONIST. I.

I. *Early Hungary.*

IT is less than fifty years since the name of Kossuth, the leader in the Hungarian revolution of 1848, who lately died in voluntary exile at Turin, was as familiar as a household word. The cause of Hungarian independence aroused an intense interest. In Europe, it excited both hope and alarm; in America, it enlisted the sympathy of the people to an extent that was unprecedented. It appeared at a time when the spirit of democracy, which distinguishes the political and social development of the nineteenth century, was especially active. All Europe seemed to be in a democratic ferment. Paris, Vienna, Frankfort, Berlin and all parts of Germany and Italy were in a state of revolutionary commotion. Hardly a throne on the continent seemed safe.

From the foundation of the Magyar throne at the opening of the eleventh century, when Stephen I, generally known as St. Stephen, was crowned as king in the cathedral at Gran, till the beginning of the fourteenth century, Hungary was an independent kingdom ruled by native princes. Lineally descended from Almos, the barbarian chief who, in the latter part of the ninth century, led the Magyar incursion into the land of the Huns, Stephen was the great-grandson of Árpád, by whom the conquest of Hungary was completed. He not only founded the monarchy, but he gave a system of laws to the people, and powerfully contributed to the establishment of Christianity. For his coronation the Pope sent him a crown of gold, and his assumption of the royal dignity was celebrated with striking ceremonies.

Soon after his coronation Stephen granted to the great nobles of the country a constitution. He appointed a Palatine, or arbitrator, between himself and his subjects. He divided h'

country into districts, over each of which he placed an administrator with civil and military functions, and he defined the powers of the National Diet, or Parliament, which had first been convoked by his great ancestor Árpád. The reign of St. Stephen was glorious in the history of the country, and his sacred crown was handed down from ruler to ruler both as a symbol of authority and an object of veneration.

The government of the country was, however, by no means an easy matter. Wars internal as well as foreign disturbed the land, and in the course of the two hundred years succeeding the establishment of the kingdom, the royal prerogatives grew till the power of the crown became practically absolute. At last the Magnates, or great nobles of the kingdom, invoked the interposition of the Pope, and in 1222 he granted the Golden Bull, which is generally referred to as the *Magna Charta* of Hungary. It provided that the nobles and their possessions should not for the future be subject to taxes and imposts; that the nobles and franklins (the freemen employed to defend the fortified castles of Hungary), though bound to perform military duty at their own expense, should not be forced to go beyond the frontiers of the country, and that in case of foreign war the king should pay the troops of the several districts; that the king should not entail whole counties or high offices of the kingdom, or farm out the domain, the taxes, the coinage or the salt mines; and that no noble should be accused, arrested, sentenced or punished for crime, except in accordance with law.

The concessions of the crown failed to bring permanent content. Many of the Magnates who had profited by the usurpations of the king were indisposed to yield what had unjustly been granted them; and the rule of Bela IV was so severe that at one time the nobles started a revolt. In 1301, by the death of Andrew III, the native line of Árpád came to an end, and for many years thereafter the history of the country presents a succession of dynastic struggles. Prior to that time such struggles had taken place, but after the end of the Árpád line they became chronic. More than once the golden crown of St. Stephen was carried to foreign lands by its temporary

possessor, and in 1526 it passed finally into foreign hands. In that year King Louis II was killed in battle with the Turks. He was the last prince to wear the crown of St. Stephen as that of an independent kingdom.

It has often been said that with the death of Louis II the struggle in Hungary between despotism and constitutional liberty began; but the government had always been aristocratic, and the rule of some of the kings had been notoriously despotic. The great mass of the people were substantially in a condition of serfdom. It is true that the country, though it sometimes fell under the power of invaders, had never been subjugated, and thus had retained its constitutional independence. But the issue between liberty and despotism did not begin with the assumption of the crown by the House of Hapsburg; it only changed its form and became more pronounced.

After the death of Louis II an armed contest for the throne of Hungary took place between John Zápolya, waywode, or governor, of Transylvania, and Ferdinand, Duke of Austria. Zápolya claimed the throne by virtue of his election by a diet sitting at Stuhlweissenberg. Another diet, sitting at Pressburg, and comprising some of the most eminent nobles, elected Ferdinand, who was the brother of the Emperor Charles V. Ferdinand was closely connected with the royal house of Hungary. Louis II had married his sister, and he himself had married the eldest daughter of Uladislaus, Louis's predecessor. Zápolya actually gained the throne, but the war was kept up by Ferdinand till 1539, when a treaty was concluded under the mediation of the emperor, by which Transylvania, together with a part of Hungary, was left to Zápolya, while the rest of Hungary was transferred to Ferdinand. Subsequently, the crown of St. Stephen and the crown jewels were delivered over to Ferdinand, and the country came under the rule of a prince of the House of Hapsburg.

From this event proceeded certain inevitable results. It is not necessary to suppose that the princes of the House of Hapsburg were malevolent in their purposes, in order to

explain the fact that under their rule Hungary lost many of the attributes of nationality. The interest of its kings was to consolidate an empire rather than to develop the independence of any of its parts. The office of German Emperor, though nominally elective, had become practically hereditary in the House of Hapsburg. In time the Hungarian crown, though originally given to Ferdinand by election, also became hereditary in that house. The Hungarian chancery was transferred to Vienna. Austrian troops were quartered in the kingdom. The country lost its fiscal independence. The diet ceased to be convoked except at long intervals. Hungarian Magnates were induced to live in Vienna, and were weaned from the land of their nativity and its interests. A large part of the Magyar population espoused the cause of the Reformation and became Protestants, but the influence of the Catholic sovereign, and sometimes his repressive interposition, were thrown into the opposite scale. Hungarian nationality, thus emasculated, promised to become a thing of the past. But it could not expire without a struggle.

II. *Hungary in 1848.*

In 1848 the Kingdom of Hungary embraced, in its widest sense, Hungary proper, certain annexed territories, and the principality of Transylvania. The annexed territories were (1) Slavonia, in which may be included the three Slavonian counties and the Slavonian military frontiers; and (2) Croatia, in which may be included the three Croatian counties, the Croatian military frontiers, and the Hungarian Littoral, or coastland, on the Adriatic. It will, however, be seen that the relations of the annexed territories and of Transylvania to the Hungarian kingdom formed a subject of controversy.

The population of Hungary proper was about 11,200,000; of the annexed territories, about 1,800,000; of Transylvania, about 2,000,000: in all, about 15,000,000. Of the total population, something more than a third were Magyars, who lived chiefly in Hungary proper. There was an almost equal num-

ber of the Slavonic race, widely distributed in diverse branches through Hungary proper and the annexed territories. The Dacians numbered nearly 3,000,000, and the Germans 1,400,000. There were 245,000 Jews, 45,000 gypsies and about 30,000 souls of various races not specified.

In religion there were more than 8,000,000 Roman Catholics, and 2,500,000 communicants of the Greek Church. The Protestants numbered about 4,000,000, but they derived their principal strength from the predominant Magyar race.

The nobles of Hungary, who alone possessed political power, were divided into several classes. All were alike in that they enjoyed certain privileges, one of which was freedom from taxation ; in other respects they widely differed. The first class, consisting of the titled nobles—princes, counts and barons—formed what we generally understand by the term nobility. These were the Magnates, or peers of the realm, who appeared of right in the Diet and formed its upper house. They could appear in the Diet, indeed, either in person or by proxy. The proxy, however, could sit only in the lower house, where he had a somewhat barren right to speak, but could not vote. The second class, consisting of the untitled nobles, fell into three subdivisions : (1) Those who possessed considerable landed estates, or who had studied law. From these the county magistrates and the delegates to the Diet were chosen ; (2) the “half-spurred” nobles—small land-holders¹ who formed the mass of the electors ; (3) the landless nobles, who did not possess the elective franchise, and who gained their livelihood in various bread-winning occupations.

It has been seen that in the time of St. Stephen, Hungary was divided into districts for purposes of administration. These divisions, which were known as counties, bore a closer resemblance, in their organization and government, to Swiss cantons than to English or American counties. The county assemblies, or congregations, as they were termed, declared themselves to be autonomous, and exempt from superior authority in the

¹ Including every one who possessed, as the Hungarians said, “a house and four plum-trees.”

management of county affairs. In each county there was a lord-lieutenant. In three counties this dignity was held *ex officio*, in seven it was hereditary; in the remaining forty-five it was filled by appointment of the crown. All other county officers and magistrates were elected by the people, that is to say, by the nobles who exercised the elective franchise; and in this, as in other matters of election, the vote of each noble, no matter what his rank or condition, was equal to that of any other qualified elector.

By an ancient law, it was made the duty of a lord-lieutenant to reside in his own county. In time this act became a dead letter. The lords-lieutenant were usually Magnates, or noblemen — men of rank and fashion as well as of fortune — who, in order to gratify their tastes, deserted their duties and lived permanently abroad, only paying their counties occasional visits, generally for the purpose of giving a banquet at an election. In order to remedy this evil, the government some time before 1848 adopted the plan of appointing nobles (as distinguished from Magnates, or noblemen) to the office of lord-lieutenant. In 1848 there were upwards of twelve lords-lieutenant of that class. But when Count Apponyi became Austrian chancellor in 1847, he sought to revolutionize the system of county administration, so as to increase the influence of the crown. By long continued usage, it had become an established custom in counties in which the dignity of lord-lieutenant was held *ex officio*, to appoint an administrator; and the same course was pursued in counties where the dignity was hereditary, whenever the lord-lieutenant happened to be a minor. Count Apponyi sought to extend to the whole kingdom this plan of appointing administrators. He persuaded most of the Magnates who held the dignity of lord-lieutenant virtually to abandon their offices by consenting to the appointment of administrators, whose salaries were paid from the royal treasury and who were in other respects under the control of the crown. In 1848 such administrators had been appointed in twenty-nine of the fifty-five counties in the kingdom.

The subject of county administration has been introduced

in this place, as one of the most significant questions involved in the revolution of 1848. Other questions will presently be noticed. On one side was the Conservative Party, under the influence of the Magnates, which was not disposed to resist the influence of the crown. On the other side was the Liberal Party, anxious to preserve Hungarian nationality, and advancing step by step to the assertion of that principle. Of this latter party Louis Kossuth became the leader. It will be well to glance at his previous career.

III. *Kossuth's Early Career.*

Louis (Lajos) Kossuth was born in the village of Monok, in the county of Zemplén, Hungary, on the 27th of April, 1802. His father, Andreas Kossuth, was a lawyer, and the owner of a small landed estate. He was an untitled noble, not a nobleman, and of Slavic, not Magyar, descent, having sprung from an old Croatian family of which it is said that many members had been prosecuted for political offenses. In religion he was a Protestant.

Louis Kossuth received his first instruction from a Protestant clergyman. Subsequently he attended a school at Ujhely, but his scholastic training was completed at the Calvinist College of Patak, which was anti-Austrian in its traditions and filled with memories of Rákóczy, and at the Lutheran College of Eperies. He then adopted the study of law, and, after attending the courts for the requisite time and receiving his diploma, he returned to his native county and entered upon the career of an advocate.

His attention was early turned to politics. In 1832 he appeared in the National Diet as the proxy of a magnate. A reform agitation begun by the Diet of 1825 had then assumed a tangible form. During the session of the Diet in 1790, a committee had been established to consider the revision of the laws. The report of this committee was not made to the Diet till 1830, but, when it was finally submitted, it presented a definite and comprehensive plan of reform. In the Diet of 1825 Paul Nagy and Count Stephen Széchenyi appeared :

champions of a program aiming to abolish the burdens of feudalism and to invest the mass of the people with political rights. These questions were still uppermost in the Diet of 1832, and again in the Diet of 1834, in both of which Francis Déak appeared as the most prominent champion of reform. During the session of the Diet of 1834, Kossuth may be said to have begun his active political career. One of the greatest difficulties under which the Liberal Party labored was that of informing the electors of the Dietal proceedings. As the members of the House of Deputies were not only elected but also instructed by the counties, it was essential that their constituents should be accurately informed of what took place. The official record of the daily proceedings was too voluminous for that purpose. Kossuth, therefore, undertook to publish a journal which should convey the substance of what took place, together with a free commentary on public questions. The title of this journal was the *Parliamentary Messenger*. In order to avoid a decree against printing the debates in the Diet, he adopted the expedient, following the example of Wesselényi, in Transylvania, of using a lithographic press. When the government signified its disapprobation of his enterprise by offering to purchase his press, he resorted to the employment of secretaries, and undertook to carry out his project under the guise of a written correspondence. His papers were then intercepted in the post-office, but he met this move by employing private carriers. The demand for the journal grew to enormous proportions. The spirit of the people was aroused, and the strength of the Liberal Party increased daily.

When the Diet adjourned in 1834, it became necessary to find a means of continuing the Liberal agitation, and of securing harmony in the action of the county meetings. For this purpose Kossuth undertook the publication of another written journal, the *Messenger of the Municipal Bodies*, in which he undertook, with the coöperation of correspondents in the several counties, to collect and disseminate, in a compact and intelligible form, the political news of the kingdom. The influence

of the journal immediately became so pronounced, that the government ordered its publication to be discontinued. Kossuth refused ; and the government, failing in its efforts to secure his arrest by the civil authorities, seized him on a charge of minor treason and confined him in the fortress of Buda. For two years he remained in solitary confinement, his trial remaining in suspense. In 1839 he was condemned to four years' imprisonment, but in April, 1840, he was released under a general amnesty to all political offenders.

After his release Kossuth did not long remain inactive. In 1841 Ludwig Landerer, a publisher of Pest, obtained a license from the government for the publication of a political paper, and invited Kossuth to become its editor. The government, adopting a conciliatory policy, gave its permission, and the journal appeared under the editorship of Kossuth with the title of *Pesti Hirlap*, or *Pest Journal*. Men of prominence, such as Bezérédy, Baron Joseph Eötvös and Colonel Pulszky were among its contributors, but the pervading spirit was that of Kossuth. In the summer of 1844, however, a difference with Landerer led Kossuth to resign the editorship of his paper, and he then retired from the journalistic field.

While in control of the *Pesti Hirlap*, Kossuth had endeavored to promote the organization of certain enterprises for the independent development of Hungarian resources. To the accomplishment of that design he now devoted all his energies. Savings banks were established, first at Pressburg, and then in the principal cities of the kingdom. An association was formed for the purpose of extending commercial relations with foreign countries. An effort was made to encourage the construction of railways. But of all his projects one of the most extensive and important was that for the formation of companies for the systematic promotion of Hungarian manufactures and commerce. For this purpose Kossuth advocated the policy of protection, and the use of Hungarian manufactures in preference to foreign. He sought to strengthen the commercial and manufacturing population, and thus to create a powerful middle class, which should be invested with political rights.

IV. *The Diet of 1847-48.*

In 1847 Kossuth was elected a delegate from Pest to the National Diet. At a general assembly of the Liberals at Pest in March of that year, he had presented a draft of a public address, which, after some slight modifications by Francis Déak, was published as the Liberal program. Its tone was distinctly national. It declared the existing government of Hungary to be an alien government, from which no hope of relief could be entertained, and demanded further guarantees for the independence of the country. Among such guarantees, it included a responsible ministry, liberty of the press, the union of Hungary and Transylvania and publicity respecting public affairs. While these guarantees were mentioned as objects ultimately to be attained, certain other measures were specified for immediate proposal to the Diet. Among these were a general system of taxation for all classes, noble and non-noble, a reform in representation, equality before the law, and an alteration of land tenures. Hungarian interests, the address declared, could no longer be subordinated to those of the rest of the empire, nor could Hungary tolerate a system that would sacrifice her nationality to a so-called administrative unity.

The Diet was opened at Pressburg on the 11th of November by Ferdinand I, Emperor of Austria, who appeared before the Diet as Ferdinand V, King of Hungary. The post of Palatine having become vacant by the death of the Archduke Charles, the Diet by acclamation elected his son, the Archduke Stephen, to succeed him. The new Palatine was installed on the 15th of November, and on the following day certain royal propositions were read to the Diet. Ferdinand promised that the question of quartering troops should be taken into consideration; that the privilege of representation in the Diet should be given to the royal free towns and certain other corporations; that a reform should be made in the tenure of lands; that custom-house barriers between Austria and Hungary should be abolished; that means of communication should be improved; that the reincorporation of the Transylvanian coun-

ties should be considered, and that a new code of criminal laws should be made.

These propositions provoked a heated discussion. The Conservatives were satisfied. The Liberals viewed the royal propositions with suspicion. The Conservatives were desirous of moderate reforms, in a manner tending to strengthen the ties between Austria and Hungary. The Liberals, while expressing loyalty to the imperial dynasty, wanted to make Hungary independent. The removal of the custom-house barriers was not desired by them. They considered these barriers one of the safeguards of Hungarian nationality, and declared that they would, if possible, "convert the tariff into a wall of brass."

On the 22d of November, a debate began in the Diet as to the response that should be made to the royal propositions. The Conservatives wished to limit the address to the usual expression of thanks. The Liberals contended that allusion ought to be made to national grievances, and especially to the recent nominations of county administrators. In support of this view Kossuth made a two hours' speech, which he concluded by reading an address embodying the sentiments of his party. While it contained an enumeration of national complaints, and protested against the new system of county administration, its principal feature was a demand that a Diet should be summoned annually to meet at Pest. This was declared to be a paramount necessity. The address was carried in the House, after a six days' debate, by a vote of 28 to 27 members, 26 counties voting for the motion and 23 against it. The delegate of Croatia was among the latter. The upper house refused to concur in the address, preferring the usual vote of thanks, and, if necessary, a reference to grievances in general terms. When this answer was returned to the House, a stormy debate ensued; and, on motion of Kossuth, the subject of the address was dropped.

In the middle of December the Diet adjourned for the Christmas holidays. It reassembled in January, 1848, and on the 14th of the month the lower house took up the bill

for the reincorporation of the Transylvanian counties. Kossuth made a two hours' speech, which, to quote the words of an eye-witness,

was listened to with profound attention, the popular orator only being interrupted by loud cheers from all parts of the House, as well as from the turbulent young juriconsults in the galleries, whenever he relieved his dry statement of facts by an impassioned burst of his peculiar eloquence.

It was characteristic of Kossuth's speeches during this period that they generally seemed to transgress the bounds of the orator's intention. His eloquence was irrepressible. In its transports both the orator and his auditors were carried away. Nothing could be drier in its details than the question of reincorporating the three Transylvanian counties of Kraszna, Záránd and Middle-Szolnok. Its history extended back to the sixteenth century and involved the examination of numerous diplomatic and other state papers. At one time the counties had sent delegates to the Hungarian Diet; but, in consequence of disputes between the Hungarian and the Transylvanian authorities, Charles III of Hungary, who was also Emperor Charles VI, by a royal decree incorporated the counties with Transylvania. In 1741 Maria Theresa gave her sanction to a Dietal act by which the counties were declared to be reincorporated with Hungary. This act was not executed. In 1792 a similar act was passed and received the royal sanction, but it too remained a dead letter. The Diets of 1825 and 1832 placed the non-execution of the act of 1792 among the national grievances, and in 1836 an act was passed by which it was declared that the counties were "fully and completely reincorporated in the Kingdom of Hungary." A royal rescript was sent to the Diet of Transylvania to command its cooperation, and the counties were summoned to elect delegates to the Hungarian Diet. The counties did not obey the royal summons, and the government pointed to this fact as an evidence that they were averse to reincorporation. Kossuth, on the other hand, relying on the representations of

leading Liberals in the counties, declared that they were prevented by agents of the government from exercising their constitutional rights. He charged that when the royal summons was sent to Middle-Szolnok, the lord-lieutenant did not deliver it to the authorities; that when the county congregation assembled, he employed an armed force to prevent it from exercising its constitutional functions; and that for this apparently disloyal course, he was "promoted to the rank of privy councillor to the Prince of Transylvania, who was at the same time King of Hungary." In Kraszna, said Kossuth, the course of the government was quite as remarkable. In that county affairs were under the control of one of Apponyi's administrators, who had been notoriously subservient to the government. "This honorable administrator," declared Kossuth,

had the general congregation held in the court-yard of his house, and three barrels of wine placed before the chair, which he occupied as president of the assembly. By means of these three barrels of wine, he persuaded the congregation to pass a resolution to the effect that Kraszna had no wish to be reincorporated with Hungary, and therefore would not send delegates to the Hungarian Diet. It has thus happened that the numerous resolutions passed during fifty years of sobriety have been annulled in a moment of drunkenness. Still the government does not make any allusion to the steps taken by Kraszna during half a century, but appeals to this last resolution, founded on three barrels of wine. [Laughter and cheers.]

When we compare the data I have submitted to the House, and take into consideration the line of policy pursued by the government, how can we blame the reincorporated counties for not sending delegates to the Diet? These counties are perfectly aware that the Prince of Transylvania and the King of Hungary are one and the same person, and therefore that the will of the one cannot be opposed to the will of the other, both being identical. They see, nevertheless, that the Transylvanian government agitates, and that those who support this agitation, instead of being punished or reprimanded, are loaded with honors, while the Hungarian government looks on and suffers laws to remain unpromulgated, and the decrees of Royalty to be treated with contumely. . . . What need I say more? I have placed the facts before you. It is for you to draw

the necessary conclusions from them. It will be for the nation to decide how long we are still to endure a government by whose unconstitutional acts the legislative, the executive and the judicial powers of the state have been utterly degraded. How long? Can I ask the question? Oh, if such acts can be any longer tolerated — tolerated, too, at a period when despotism quails before the nascent spirit of freedom, and nations benumbed into decrepitude, reacquire their pristine vitality, I shall despair of my country. [Enthusiastic cheers.]

On the 15th of January the lower house began the consideration of the Hungarian Language and Nationality Bill. No measure could have disclosed more clearly than this the obstacles that must be encountered in the attempt to hasten the establishment, over all the territory claimed by Hungary, with its great diversity of races, of a perfect nationality founded on Magyar supremacy. By the Hungarian language was meant the Magyar language. The bill declared that the Hungarian language should exclusively be employed as the official language in every department of state, civil and ecclesiastical, and in all the schools, colleges and universities of the kingdom. It was provided that for the space of six years, the Slavonian counties should be allowed to make use of Latin, and the Hungarian Littoral of either Latin or Italian, but only for local affairs. The Croats were to be permitted to use Latin for local affairs, but otherwise the official use of the Hungarian language was to be obligatory upon them, even in their public schools.

Magyarism was represented in the lower house by the forty-six counties of Hungary proper; Slavism, by the three Slavonian counties and Croatia. The three Croatian counties had, however, only one vote. They sent two delegates to the Diet, but one of these sat in the upper house. The Croatian delegate denied the right of the Hungarian Diet to say what language should be used by the Croatian authorities for local affairs. That right, he contended, belonged exclusively to the Diet of Croatia; and he complained, as did also the Slavonian delegates, of the injustice of forcing the Croatian and Slavonian

authorities to correspond with the Hungarian authorities in the Hungarian instead of the Latin language. The bill, however, was passed by a general outcry, though, on motion of Kossuth, it was provided that the Hungarian language, while it must be taught, need not be used as the exclusive means of instruction in the elementary schools.

When the third clause of the bill, requiring the use of the Hungarian language in all schools, colleges and universities of the kingdom, was under consideration, Goldbrüner, a German, the delegate of the free town of Schemnitz, sought to have an exception made in favor of the Schemnitz Mining Academy, a celebrated institution which was frequented by students from every country in Europe, as well as from America. He urged that, if the exclusive use of the Magyar language in the Schemnitz Academy should be insisted upon, the institution would soon be deserted, since foreigners who desired to acquire a knowledge of mining would not take the trouble of learning an isolated Oriental language, which in their future career would be of no service.

"If Hungarians," some one exclaimed, "are obliged to learn a foreign language when they frequent a foreign academy, why should not foreigners be obliged to learn Hungarian when they frequent an Hungarian academy?"

"But I defy you," replied Goldbrüner, "to find a professor capable of giving a lecture on mining and mineralogy in the Magyar language. You will first have to coin a number of technical words, which the language is totally devoid of."

"They shall not be wanted," replied the Magyars.

"You ought also to take into consideration," said Goldbrüner, "the pecuniary advantage which the town derives from the residence of such a number of students."

"Let the town of Schemnitz perish, so that Hungarian nationality be preserved," was the only answer Goldbrüner received.

On the 1st of February a joint session of the two houses of the Diet was held for the purpose of hearing read a royal rescript which the Palatine had brought from Vienna, on the subject of the appointment of county administrators. This re-

script, while protesting that the appointment of administrators was not a violation of the constitution, promised that the exercise of the power should be reserved for "exceptional cases," and that as soon as certain "obstacles" had been removed, the lords-lieutenant should everywhere be restored to "the full exercise of their legitimate functions." Neither party was satisfied with this rescript. The Conservatives regarded it as too great a concession to public opinion. The Liberals were divided. Kossuth gave his support to a motion that the king be asked to restore the lords-lieutenant to the discharge of their functions during the pending session of the Diet. On this motion there was an equal division, two counties not voting. The vote of the Croatian delegate, who voted against the motion, was contested, and there was a scene of great confusion. Hot words passed, in consequence of which two duels were fought the next morning. Several days later a representation was carried, in which his Majesty was simply asked to restore the lords-lieutenant to their duties, and to commit the supervision of the counties to the vice-regal council, instead of to the Hungarian chancery at Vienna.

Another subject of far-reaching importance was that of taxation, which directly affected the privileges of the nobles. Though they were exempt from taxation, they had in time of war frequently consented to pay a specific sum levied on allodial property; and they had also voluntarily contributed large sums for public works. The Conservatives were, however, averse to subjecting the nobles to the regular payment of county rates. They proposed, instead, a tax to be levied exclusively on allodial property, in the nature of a voluntary contribution for public works, rather than of a permanent, compulsory exaction. Several years previously Kossuth had advocated this measure as a compromise. But since that time public opinion had made great advances. The Liberal program demanded equality of taxation. A bill to establish such equality was passed by the lower house; but the Magnates, while forced to profess an acceptance in principle of the payment of county rates by the nobles, refused to concur in the

bill passed by the delegates, and proposed to postpone the subject till an act should be adopted for a reform in county administration.

Closely connected with the subject of taxation was the "urbarial" question. This question related to the commutation of the *roboth*, or *corvée*, a feudal exaction that bore heavily on the peasantry. The Hungarian serfs were emancipated in the fifteenth century by a royal decree, which was afterwards annulled. Subsequently, however, it was restored, and the condition of the peasants was further ameliorated by certain measures known as the urbarial regulations, which were introduced by Maria Theresa. In time the scope of these regulations was extended, and in 1840 an act was passed by the Diet to facilitate the commutation of the *roboth* by agreement of parties. Nevertheless, the situation of the peasantry continued to be most unfortunate. The minimum holding of a peasant was about twenty-five acres; the maximum, about sixty-five. For a full holding the duty of *roboth* required the tenant to work for the lord of the manor a hundred and four days in the year, or fifty-two days with a team, besides making roads and performing other urbarial services for the county. The lord also took a ninth of the natural produce of the holding, and the church a tenth. Moreover, it was on the property of the peasants that the county taxes were levied — on their land, their live-stock, or any other property they possessed, as the county magistrates might think proper. It was proposed to make the commutation of the *roboth* compulsory, and to indemnify the landlord for any temporary sacrifice of his interest that might be necessary. A bill to this effect was passed by the Delegates, but it was held in suspense by the Magnates on questions of detail, though they gave a general assent to its object.

Such were the various measures discussed by the Diet at Pressburg on the eve of the revolution.

V. The Hungarian Revolution.

On Friday, the 24th of February, 1848, Louis Philippe was forced by a revolution to abdicate the throne of France. News of this startling event reached Pressburg on Wednesday, the 29th of the same month. The Diet had just been considering, in a leisurely manner and without unusual excitement, the bill relating to the representation of the free towns. The news from Paris produced a great sensation. Frequent conferences were held between the leaders of the various parties. It was felt that a crisis had been reached, and that the time had come for action. Count Stephen Széchenyi proposed that the Delegates should go in a body to the Palatine and request him to make known their wishes to the king. This proposal was rejected. On the 3d of March Kossuth moved a representation to his Majesty, which he introduced with a speech that produced a profound impression not only in Hungary but in Austria.

When [said Kossuth], at the very commencement of this Diet, the address to the throne was moved, I considered it my duty to enter into an examination of the state of our internal affairs, as well as of the relations between the government of Hungary and the Imperial House of Austria. . . . I expressed my conviction that the future constitutional existence of our country could only be secured by our king surrounding himself with constitutional forms of government throughout his dominions. . . . I further maintained that where our interests and those of the confederated peoples of the empire conflicted, our independence, our freedom and our well-being could be secure only upon the basis of a common constituency. I took a general survey of the lamentable origin and development of the bureaucratic system of government at Vienna. I reminded you how the fabric of its enervated power was reared upon the subjugated liberties of our neighbors, and as I recounted the consequences of this fatal machinery of government, and, looking into the book of life in which events reveal the history of the future, I pronounced, in the earnestness of truth and of fidelity to the reigning family, that he who should reform the system of the government on a constitutional basis and establish the throne upon the liberty of the people, would be the second founder of the House of Hapsburg.

Since I pronounced these words, thrones sustained by statecraft have fallen, and nations which, but a few months back, could not have dreamed of the proximity of such an event, have recovered their freedom. But *we*, for the space of three months, have incessantly rolled the stone of Sisyphus, and my soul is oppressed with a feeling akin to despair to think that we should remain thus immovable. . . .

The suffocating vapor of a heavy curse hangs over us, and out of the charnel-house of the cabinet of Vienna a pestilential wind sweeps by, benumbing our senses and exerting a deadening effect on our national spirit. But, while hitherto I have been apprehensive because I perceived that the influence of the Viennese system had caused irreparable injury to our country, because constitutional progress was unsecured, and because during three centuries the contest between the absolutist government of the empire and the constitutional existence of Hungary has never been adjusted, and never could be adjusted without the abandonment of one or the other of those principles, my fears are not now for this alone. I am apprehensive lest the stagnant bureaucratic policy that prevails in the state councils of Vienna should lead the empire to destruction; and, while compromising the existence of our beloved dynasty, should also entail upon our country, which requires all its powers and resources for its own development, enormous sacrifices and an interminable succession of calamities. Such to me is the present aspect of affairs; and as such I consider it my bounden duty to call the attention of the honorable members to the evils that threaten our country. . . . When political changes occur, and the time for a peaceable adjustment has passed away; when the die is irrevocably cast, and we have neglected to give utterance to the free and loyal sentiments of representatives of the people; when matters have become so entangled that we have only to choose between submission and sacrifices whose end God alone can foresee — then will repentance come too late, and the Omnipotent Himself cannot restore moments wasted in inaction. If I, as a patriot, must share in this tardy repentance, I will at least not fail in my duty as a Delegate.

Kossuth closed his speech by reading, amid the greatest enthusiasm, the proposed representation to the king. It declared that the necessary reforms in Hungary could be accomplished only by means of a national government, independent of foreign influence, and responsive and responsible to

the majority of the people; and that a responsible Hungarian ministry was the principal and essential guaranty of every measure of reform. This representation was adopted by the Delegates by acclamation, and was sent to the Magnates. On the same day the Palatine hastened to Vienna, in order to urge upon the government compliance with the Liberal demands.

On the 13th of March a revolution took place at Vienna. When news of the revolution at Paris reached the Austrian capital, great excitement had ensued and the funds had fallen twenty per cent. When reports came of the effects of the same news at Pressburg, excitement was transformed into action. Thousands of copies of Kossuth's speech were distributed through Vienna. The people, led by students from the university, demanded freedom of the press and the establishment of a constitution. After a brief and spasmodic attempt to put down the uprising by force, Prince Metternich, who was not supported in his repressive policy by the emperor, resigned, and the emperor announced his intention to convoke an assembly for the purpose of framing a constitution for the empire.

The uprising at Vienna in turn reacted on the course of events at Pressburg. A paragraph was added to the representation to the king, in express terms demanding liberty of the press, trial by jury and annual Diets at Pest. The address, as thus amended, was adopted in both houses by acclamation; and, instead of transmitting it through the Hungarian chancery, a deputation, of which Kossuth was a member, set out for Vienna on the 15th of March to lay it directly before the king. They were enthusiastically welcomed by the populace of Vienna, and were graciously received by his Majesty. On the 17th of March they returned to Pressburg, and on the following day the revolution seemed to be complete. The press was then quite free. The Delegates had resolved themselves practically into a constituent assembly, no longer voting by counties, but individually, each delegate, whether from a county, a free town or a cathedral chapter, casting a free vote. The Magnates adopted without dissent whatever the other

house thought fit to pass. All urbarial services were abolished, with compensation to the lords of the manors; and it was resolved immediately to take into consideration various fundamental questions, including those of representation, taxation, land tenures and the organization of a national guard. In reality such organization was spontaneously taking place in all parts of the kingdom.

The revolution, however, soon passed beyond the control of its leaders. By the 20th of March regular government in the country had ceased to exist. In the larger towns, including Buda and Pest, affairs were directed by committees of safety. On the 23d of March the Diet at Pressburg adopted a bill for a responsible ministry, and immediately Count Louis Batthyányi, without having submitted the names of the members to the king, announced the formation of a cabinet, in which he himself was premier, Kossuth minister of finance and Déak minister of justice. This precipitate action was due to a message received the evening before from the committee of safety at Pest, who declared that unless the formation of a ministry was announced within twenty-four hours, the national guards would storm the arsenal at Buda and summon a national convention to meet at Pest without delay. Indeed, the Pest republicans, highly displeased at a provisional press law that had been adopted, had already declared that the Diet at Pressburg was not a popular assembly, and had demanded more energetic measures. Even Kossuth seemed for the moment to lose his popularity with them. In Pressburg, the people had quietly removed the imperial arms from the public works, leaving the black and yellow stripes on the doors and railings untouched; but at Pest they tore down the imperial arms and threw them into the street, and repainted the doors and railings with the national colors of red, white and green.

Count Batthyányi hastened to Vienna with the names of his ministers and the bill under which they were designated, in order to obtain for both the royal sanction. He was quickly followed by Déak, and by Prince Esterhazy, whose mission also was to urge concession. For a time the king hesitated, but

the course of events at Pest overcame his reluctance. On the 31st of March the Palatine brought to Pressburg a royal message in which all the demands of the Diet were granted, though in language that betrayed an unwilling compliance. On the 11th of April the king came to Pressburg to dissolve the Diet in person, and its sessions were brought to a close.

Among the acts to which the king gave his approval was the comprehensive charter of the revolution, which the Hungarians hailed as the second Golden Bull. Besides establishing a responsible ministry, through which the power of the executive was to be exercised, this act conferred upon the Palatine the title of vice-regent, together with the right to exercise, in the absence of the king, all royal powers, except the appointment of certain high dignitaries of church and state and the control of the army outside of Hungary. It provided for annual Diets at Pest, and for the triennial election of the members of the lower house. A new basis of representation was laid, and the number of representatives from Croatia was raised to eighteen. The aggregate number of deputies for the whole Hungarian kingdom was fixed at 446. The franchise was extended to every man, being a citizen of Hungary and not disqualified by guardianship, domestic service or crime, who possessed real property in town of the value of 300 florins (\$150), or from eight to ten acres in the country, or who had an annual income of 100 florins from land or investments; to every manufacturer and tradesman who had a factory or shop; to artisans who had fixed employment and at least one assistant or apprentice; and to professional men generally. The half-spurred nobles were permitted to retain the franchise, but it was expected that the privilege as such would be taken away from them at the next session of the Diet. Taxation was made equal as to all classes, and tithes and the *roboth* were abolished. County administration was placed temporarily under the control of committees, the autonomic rights previously possessed by the counties not being compatible with the new system; and it was provided that the delegates in the Diet should no longer act under instructions from their respective constituencies,

All religions were placed on an equality. Hungarian vessels were to fly the Hungarian flag. But, of all concessions made one of the most important was that which placed the Hungarian military frontiers, with the Hungarian border troops, under the authority of the Hungarian minister of war. This was one of the most difficult demands to secure, but the position of Austria was critical. A popular uprising had occurred in the emperor's Lombardo-Venetian kingdom, and the imperial troops had been driven from Milan. On the 10th of April a public meeting was held at Pest at which a demand was made for the withdrawal of all Hungarian troops from Lombardy. The time was inopportune for resisting concessions to Hungary.

On April 14 the members of the ministry were received in Pest with great enthusiasm, and began their labors in the Hungarian capital.

VI. *The Declaration of Independence.*

Before the new government was fairly established, clouds began to gather on the horizon. The revolution that had just been accomplished only marked the beginning of the task of national consolidation. This task, owing to the diversity of races and the old conflict between Magyarism and Slavism, would have been difficult enough, if Hungary had been in a position to deal with it single-handed. But, situated as she was, she was dealing with subjects of her own sovereign who looked to him as Emperor of Austria rather than as King of Hungary, and who, in defense of their own ideas of national organization, were ready to assist him in opposing the national aspirations of the Hungarians. For many years there had existed an Illyrian party, whose favorite plan had been to form Croatia, Slavonia, Servia, Bosnia, Carniola, Istria, Carinthia and Dalmatia into a united Slavonic kingdom, and whose shibboleth was the national independence of Croatia. This movement, known as Illyrism, though at one time regarded with disfavor by Austria, had always been a menace to the aspirations of the Hungarian nationalists, and to this extent it had been

encouraged rather than discountenanced by the Austrian government.

On the night of the 29th of March, 1848, there arrived in Vienna a deputation from the kingdoms of Croatia, Dalmatia and Slavonia. While professing a desire to continue under the Hungarian crown, they expressed a wish to remain true to the reigning dynasty and to preserve the integrity of the Austrian empire. They particularly asked that Baron Joseph Jellachich be appointed Ban, or governor, of the united kingdom; that a Diet be summoned to meet at Agram not later than the first of May, and each year thereafter in succession at Agram, Essek, Zara and Fiume; that a ministry responsible to the Diet be appointed; that their national language be used in the interior and exterior administration of the kingdom, as well as in public instruction; that freedom of the press, of creeds, of instruction and of speech be secured; that equality of all persons before the law, trial by jury and responsibility of judges be established; that taxes be made uniform and the *robot* abolished; that their finances be freed from the control of Hungary; that a new union be made of Dalmatia, Croatia, Slavonia and the military frontiers; that national troops be permitted to remain in the kingdom in time of peace, and all foreign troops be sent out of it. Other requests were made of a minor character. The resemblance of these petitions to the demands of the Hungarians is too obvious to require comment.

The petition in relation to Jellachich was readily granted. Not only was he appointed "Banus of Croatia, Slavonia and Dalmatia," but he was made a councillor of state and advanced over the heads of a large number of senior officers from the rank of colonel to that of lieutenant-general — an advancement almost if not quite unprecedented in the imperial army. Jellachich, who was a native of Croatia and the son of an officer of rank, had early attracted the notice of the imperial family both by the precociousness of his mind and by his gallantry on the field. To his loyalty as a soldier of Austria, he added a determined hostility to Magyar supremacy. All the concessions asked for by the deputation, except the appointment of Jella-

chich, were refused, on the ground of their incompatibility with the national claims of Hungary. The refusal, therefore, only served to intensify the flame of Croatian hostility to the Magyars.

In May an insurrection broke out among the Servians and Wallachs in southern Hungary, and, as the Hungarian national forces had not been organized, the hostile movement soon assumed alarming proportions. But there was still graver cause for apprehension in events that were taking place in Croatia. The question of Croatia was of vital importance to the new Hungarian nation; for in the possession of this Slavic kingdom was involved the control of the littoral claimed by Hungary on the Adriatic, and in the control of the littoral the commerce of the nation was at stake. It was to the port of Fiume, situate in that territory, that Hungary looked for her great emporium. Communication between Pest and Fiume lay through Croatia, and Croatia herself asserted a title to Fiume.

Several years previously, before he became a delegate to the national Diet and while the Illyrian movement was at its height, Kossuth, in the general assembly of the county of Pest, had proposed that a legal separation be effected between Hungary and Croatia. As he afterward declared, his proposal was received with universal disapprobation; even his best friends were offended at it. Political power once gained is seldom relinquished without a struggle. The Hungarians were not disposed to release their hold on Croatia. From the point of view of Hungarian nationality, they had not used their power tyrannically. The consolidation of the Hungarian nation required the curtailment of local independence everywhere, in the Hungarian counties as well as in Transylvania, Slavonia and Croatia. As compensation to the Croats for the suppression of their national independence, Hungary offered them a full participation in the fruits of the revolution. As individuals she gave them a larger measure of liberty than they had ever before possessed. That they should reject the boon of freedom tendered by Hungary and put themselves under

the yoke of absolutism, was incomprehensible. Such a course bore evidence not only of misconception but also of a rebellious spirit, and it must be resisted — by peaceful measures if possible; but it must be resisted. Thus reasoned Kossuth in 1848.

The Croats took a different view. Political association is only in part a matter of reason or even of common interest. It is chiefly a matter of affinity. The world is ruled by sentiment. Nations are made by community of feeling, springing from similarity of race, language and creed. Without these there may be concert, but not unity. Compulsory association seldom breeds affection; and a benefit forced upon an unwilling recipient is likely to excite his resentment rather than his gratitude. In this spirit the Croats repelled the Hungarian advances. Not only did they differ from the Magyars in race and in language, but they differed in religion, nine-tenths of them being Roman Catholics and the other tenth being mostly of the Greek Church; nor did they relish the idea of being placed completely in the power of the Hungarian Diet, where they would always be outvoted. When, therefore, the government at Pest ordered the Croatian authorities to correspond with the Hungarian departments of state, they refused to do so. To this course they were counseled by Jellachich, who, when he was summoned to put himself in communication with the Hungarian ministry, not only disobeyed the command, but called a diet to meet at Agram in June. At the solicitation of the Hungarian government, an imperial communication was then sent to the Ban, directing him to place himself under the orders of the vice-regent.

In giving this direction, the imperial government seems to have been inspired by a desire to avert a crisis which might have caused the fall of the existing Hungarian ministry. Such was the motive disclosed by Lord Ponsonby, the British ambassador to Austria, who betrayed little sympathy with the Hungarian national movement. Apart from a dislike of revolutionary movements in general, his lordship, true to his instincts, was unfavorably impressed with the manner in which

the Hungarian Liberals had interfered with the revenues of the great landlords. His statements, therefore, as to the motives of the Austrian court, may, in view of his personal predilections and his official relations, be received with consideration.

It is certain [said his lordship] that the Ban knows the reason by which the imperial government was moved, and it is believed, as well as hoped, that he will content himself with silent disobedience. He knows that the Hungarians are unable to enforce the order, . . . and therefore that no attempt will be made which will bring on a crisis. If this be so, time will be gained for an adjustment between Hungary and Croatia, which I presume must ultimately be accompanied by an abandonment of Hungarian pretensions.

In May the Austrian cabinet was reorganized, and General Latour was appointed minister of war. In the same month the imperial court was removed to Innsbruck. Ferdinand, mild in disposition and upright in his intentions, was little adapted to the situation in which he found himself. Having granted the demands of the Hungarians, he was disposed to adhere to his engagements, but the court and the cabinet sought to reëstablish the supremacy of the empire, and the state of affairs in Croatia revealed a way to the accomplishment of their design. On the 16th of May, two orders were received at Agram from the Hungarian vice-regent. These orders were about to be destroyed by the people, when the Ban interceded; but the portraits of the vice-regent and his ministers were publicly burned in the piazza before the council house with the consent of the authorities. Ferdinand proclaimed the Ban a rebel and declared the diet at Agram to be dissolved. The Ban, supported by the Austrian court and cabinet, paid no heed to these condemnatory utterances, further than to intimate that, if he were arrested, he would recall all the Croatian troops from Italy. On the 29th of June Lord Ponsonby wrote to his government that it seemed to him "that the Ban and the Croatians might be instrumental in saving the empire."

On the 2d of July the new National Diet assembled at Pest. On the 11th there was enacted in it a memorable scene. On

that day Kossuth brought forward his motion on the national defenses. Enfeebled by excessive labor and by illness, he moved slowly up the aisle supported by two deputies, and as he ascended the tribune the tumultuous applause with which his appearance was greeted was succeeded by the deep silence of expectancy. As he proceeded with his oration, his voice, at first feeble, became stronger and more distinct, and his strength seemed to be renewed.

Gentlemen [said he], in ascending the tribune to call upon you to save the country, I am oppressed with the greatness of the moment: I feel as if God had placed in my hands the trumpet to arouse the dead, that, if sinners and weak, they may relapse into death, but that, if the vigor of life is still in them, they may waken to eternity. The fate of the nation at this moment is in your hands; with your decision on the motion which I shall bring forward, God has placed the decision of the life or death of Hungary; and because this hour is so important, I have resolved not to use the weapons of rhetoric, for I cannot but believe, I cannot but feel convinced, however opinions may differ in this house, the sacred love of our country and a desire for its independence, honor and freedom is so general among us, that we would all be equally ready to offer the last drop of our blood for its sake. . . . Gentlemen, our country is in danger. It is, perhaps, enough to pronounce these words; for with the dawn of freedom, the veil of darkness has fallen from the eyes of the nation.

Kossuth then proceeded to sketch the situation of the country. He referred to the fact that a Russian army had entered Moldavia, where it might move as a friend or as a foe. The nation, he said, must hold itself prepared for either contingency. It was also necessary to consider the attitude of Austria. The disturbances in Croatia were evidently connected with the scheme of the Viennese ministers to reacquire control over Hungary. Such a policy they could not pursue without bidding defiance to Hungary; and he declared that, with the Austrian relations on the one hand, the state of the countries on the lower Danube on the other, the Servian insurrection, the Croatian rebellion, the Pan-Slavic agitation and other reactionary movements, the nation was placed in imminent peril.

Nor was there any foreign alliance in which the nation could find protection and safety. England would assist only so far as she might find it consistent with her own interests. Poland relied on French sympathy: she received that sympathy; yet Poland was no more! Germany had taken her first step towards unity, but the Frankfort assembly was still struggling for existence, and was not yet sufficiently matured to enter into negotiations with foreign powers.

That nation alone [continued Kossuth] can survive, which has vital power within itself; but the nation which cannot be sustained by its own strength and is dependent on the assistance of others, has no future. I therefore call upon you, gentlemen, to form a generous resolution. Proclaim that, with a just appreciation of the extraordinary circumstances that have caused the Diet to be summoned, the nation has determined to make any sacrifice that may be necessary for the defence of the crown, of its own freedom and its independence. But in order to make this important resolution effective, and if possible to make an honorable peace or else to be victorious in battle, let the government be authorized to increase the effective force of the army to 200,000 men, and to that end immediately to equip 40,000 men, the rest to be levied as may be expedient for the safety of the country and the honor of the nation. . . . Gentlemen, I believe that the future existence of the nation depends on the resolution to be adopted by the House on this occasion, and not only on the resolution itself, but on the manner in which it is declared. To-day we are the ministers of the nation. To-morrow others may take our place: no matter. The ministers may be changed; but thou, O my country, thou must forever remain, and the nation itself, by whatever ministry it may be guided, must alone preserve thee! To do this, it must develop its strength. Therefore I here solemnly demand of this House a grant of 200,000 soldiers and the necessary pecuniary assistance.

At this point Kossuth paused, as if his speech had failed him. In a moment a delegate sprang to his feet and exclaimed: "We grant it." The house rose as a body and repeated his words.

The revolutionary party, of which Kossuth was the leader, was not content with the measure of independence already at-

tained. Kossuth advocated the assumption by Hungary of the exclusive management of her foreign affairs, through her own ministers and consuls. He carried in the Diet, against the opposition of Batthyányi and Déak, an amendment to the address to the throne, prescribing certain conditions on which the grant of further aid to the imperial government in the war in Italy was made dependent. He also proceeded to carry out his financial plans by issuing one-florin and two-florin bills, which came to be known as the "Kossuth notes."

The last act in the drama of the revolution soon began. Under the mediation of the Archduke John, a conference was brought about at Vienna between Jellachich and Batthyányi, but they parted with expressions of mutual hostility. On the first of September the Ban entered and occupied the port of Fiume. The king not only refused to approve the bill passed by the Hungarian Diet for the raising of troops and money, but he intimated that he had exceeded his powers in making some of the concessions that had already been granted; and he commanded the Palatine to send some of the ministers to Vienna to consult as to the reconciliation of Hungary and Croatia, and as to the best means of preserving the integrity and unity of the empire. On motion of Kossuth, a deputation of the Diet was appointed to wait on Ferdinand and definitely ascertain his intentions. The response of the king was vague and unsatisfactory, and the deputies left Vienna, having hoisted the red flag and wearing red cockades and feathers in their hats. On the following day Jellachich crossed the Drave, the stream that separates Croatia from Hungary, and advanced toward Pest.

When the deputation returned to Pest, the ministry in a body resigned. The policy of reconciliation, which Batthyányi and Déak represented, appeared to the majority of the deputies to be no longer practicable. The Palatine put himself at the head of the Hungarian army, but, after a futile attempt to hold a conference with Jellachich, resigned and retired to Germany. Ferdinand, with a view to avoid a battle between the Croats and the Hungarians, appointed Count Lamberg com-

mander-in-chief of all the forces in Hungary, including those under Jellachich, and invested him with full power to negotiate an amicable settlement. The Diet, led by Kossuth, declared that the appointment of Count Lamberg, which had not been countersigned by the Hungarian premier, was illegal. Lamberg, however, though warned of the prevailing excitement, proceeded to Pest, and, while driving in an open carriage on the bridge of boats from Pest to Buda, was killed by a mob, which dragged his body through the streets. This deplorable event was followed by an engagement between the Hungarian and the Croatian troops; and Jellachich, by a royal decree in which the preceding circumstances were recited, was appointed commander of all the forces in Hungary, its adjacent kingdoms and Transylvania, and royal plenipotentiary commissioner, with authority to take all measures within the limits of executive power.

The sympathy between the people of Vienna and the people of Hungary has already been noticed. The proclamation empowering Jellachich to move against the Hungarians was immediately followed by an uprising in Vienna. General Latour, the Austrian minister of war, was surprised and killed in his office, and his naked body was hung from a lamp post. The emperor and his family, under an escort of troops, fled the city. The arsenal was seized and looted. The assembly voted that the army should not be permitted to come within a certain distance of the city, and a deputation was sent to Jellachich, who was near Vienna, asking him to withdraw. Jellachich replied :

The motives of his advance are those that he cherishes as a servant and soldier of the state. As a servant of the state, it is his duty to oppose anarchy ; as a soldier, the thunder of the cannon points him out his route. His object is to support the monarchy upon the principle of equal regard for nationalities. If he be attacked, he will repel force by force.

The defense of Vienna was undertaken by General Bem, a Polish officer who had served in the revolution in Poland of 1831, and who, with many other of his exiled compatriots

called again into activity by the events of 1848, had hastened to espouse the cause of the revolution in Austria and Hungary. The command of the imperial forces about Vienna was now assumed by Prince Windischgratz, who immediately announced that he was invested with civil and military power over the whole empire.

When, after the resignation of the Batthyányi ministry, the prospect of hostilities became certain, the control of affairs in Hungary was placed in the hands of a committee of defense, of which Kossuth was made president. Kossuth now urged that the Hungarian army should march to the relief of Vienna. By his appeals to the people he had collected an army of upward of 30,000 men, and on October 28 he crossed the Austrian frontiers. On the same day the suburbs of Vienna were stormed by the imperial forces and Prince Windischgratz turned to intercept the advancing Hungarians. On the following day he met and defeated them at Schwechat. The municipal authorities of Vienna formally surrendered the city, and General Bem, escaping in disguise, joined Kossuth, while the command of the Hungarian army of the Upper Danube was given to General Gorgei, who had at one time been an officer in the Austrian army.

Toward the close of November Kossuth applied through a personal friend to Mr. Stiles, the *chargé d'affaires* of the United States at Vienna, to ascertain whether he would employ his good offices for the settlement of the differences between Austria and Hungary. Mr. Stiles, though without hope of success, consented on grounds of humanity to make the attempt, with the understanding that his intervention, if accepted by the imperial government, would be confined to opening the door to reconciliation. On the night of December 2 a young lady, disguised as a peasant, arrived at the office of the American legation with a letter from Kossuth, with which she had traveled in an open cart, exposed to a snow storm, in order to escape suspicion and arrest. In this letter, which was signed by Kossuth as president of the committee of defense, and countersigned by Francis Pulszky as secretary

of state, Kossuth requested Mr. Stiles "to initiate a negotiation for an armistice for the winter between the two armies standing on the frontiers of Austria and Hungary, and so to stop the calamities of a war so fatal to the interests of both countries." Mr. Stiles informed Prince Schwarzenberg, the imperial secretary for foreign affairs, of what had occurred, and the latter, while expressing the opinion that intervention was hopeless, advised him to confer with Prince Windischgrätz. Prince Windischgrätz received Mr. Stiles with the utmost kindness, but replied :

I can do nothing in the matter ; I must obey the orders of the emperor. Hungary must submit. I will occupy Pest with my troops, and then the emperor will decide what is to be done. I cannot consent to treat with those who are in rebellion.

When this interview was held Ferdinand was no longer emperor. On the 2d of December, the day Kossuth's fair messenger arrived in Vienna, he abdicated the throne in favor of his nephew, the Archduke Francis Joseph.— Francis Charles, the heir presumptive, having renounced the succession. It had been determined by the court and the cabinet to reduce the Hungarians to submission. Jellachich was appointed governor of Dalmatia and Fiume, and Prince Windischgrätz proceeded to Hungary, where he encountered and dispersed a force of 5,000 men under General Perczel. The seat of the Hungarian government was then removed from Pest to Debreczen, which was further from the seat of war, and the command of the Hungarian armies was given to General Dembinski, a Polish officer who had fought under Napoleon, and who had acquired fame by his military conduct in the Polish revolution of 1831. On the 27th of January, 1849, however, he suffered defeat at the hands of Prince Windischgrätz, and shortly afterward he was deprived of his post.

On receiving news of the victory of Prince Windischgrätz, the emperor on the 4th of March proclaimed at Olmütz a new constitution for the whole empire. It abolished feudalism ; established equality of rights ; gave to each province of the

empire, of which Hungary was treated as one, a diet; made Croatia and Slavonia independent of Hungary; declared the equality of nationalities; and created a *Zollverein* between the different parts of the empire. Kossuth maintained that this act, which involved the abrogation of the national concessions of Ferdinand, should be answered by a declaration of Hungarian independence. His associates, however, were not yet ready to take this step. The sentiment of loyalty to the crown was still influential with the people as well as with the army. But events were preparing the way for the final measure of separation.

While Prince Windischgratz was pressing his way in Hungary, the Hungarians under Bem, in Transylvania, were winning a succession of remarkable victories, not only over the combined forces of the Austrians and Wallachs, but also over the Russians. The revolutionary character of the movement in Hungary, and the prominent participation in it of leading spirits in the Polish insurrection of 1831, had not failed to attract the attention of the Czar, as well as to excite his apprehensions lest the objective point of these recruits might be Galicia and Poland. He accordingly sent a force into the Turkish principality of Wallachia, with instructions to enter Transylvania and occupy the cities of Hermannstadt and Kronstadt, if the superior Austrian military authority there should request it; and when this force, the imperial armies having been defeated, entered Transylvania and occupied the cities in question, Bem attacked it and drove it back into Wallachia. The tide also began to turn in Hungary, where the army under Gorgei won a series of victories and pushed on toward Pest. The national spirit, already greatly aroused by the intervention of Russia, rose higher yet under the stimulus of success. The idea of separation became popular.

On the 14th of April the National Assembly, sitting in the Protestant church at Debreczen, on motion of Kossuth, declared "Hungary with Transylvania, as united by law, with its dependencies, to constitute a free and independent sovereign state"; and that the House of Hapsburg-Lorraine, for having levied

war against the Hungarian nation, destroyed the integrity of its territory, compassed the destruction of its rights, and called in the army of a foreign power to annihilate its independence, should be, "as treacherous and perjured, forever excluded from the throne of the United States of Hungary and Transylvania, and deposed, degraded and banished forever from the Hungarian territory." It was further declared that the adoption of a new form of government would be left to be determined by the Diet of the nation in the future. Meanwhile, affairs were to be conducted on the principle of personal responsibility, and Kossuth was unanimously chosen as governor of Hungary, with power to nominate a ministry.

The Hungarian successes continued. Though the declaration of independence produced serious discontent in a part of the army, reinforcements came in large numbers. There was hardly an unmarried Transylvanian noble, it is said, who had not entered the service. On the 19th of April, the Hungarians gained another decisive victory, and in less than a week they reëntered Pest. With the exception of a garrison at Buda, the country was abandoned by the imperial forces. Kossuth and others now desired Görgei to move on Vienna, the way being open and the city unprepared to resist. If the Austrian capital should be taken, perhaps the war might be brought to a close on Hungary's own terms. Görgei, however, instead of crossing the Austrian frontiers, turned aside to besiege Buda. After a siege of nearly a month the fortress was captured, and the government returned to Pest. This event was the subject of great rejoicing, but the fate of Hungarian independence was already sealed.

As early as November, 1848, Lord Ponsonby, in adverting to the advance of a Russian force in Moldavia, clearly foreshadowed the possibility of Russian intervention in the Hungarian contest. Austria had not, he was quite sure, asked the Czar for assistance, but the relations of the courts were most amicable; and he had little doubt that, if the Austrians should receive a severe check in Hungary, or be attacked in Italy by an enemy possessing the power to put the emperor in danger,

the Czar would give to the latter his most efficient support. Up to this point the British government had maintained an attitude of non-intervention; and when, in December, 1848, an agent of Hungary arrived in London, Lord Palmerston refused to receive him. Subsequently, however, the British government watched the movements of the Russians as a matter affecting the rights of Turkey. With Lord Palmerston the subject of Turkish independence was a specialty; with Stratford Canning, then British ambassador at Constantinople, it was an infatuation; and they ardently pursued it till 1854, when the Ottoman patient, surcharged with anti-Russian potions, brought on the Crimean War. But their solicitude was not for the Turk himself; it was for Constantinople, the objective of Russian ambition.

When the Russian forces entered Wallachia with a view to intervene in Transylvania, Canning, supported by the French minister at Constantinople, advised the Porte that such intervention, from a principality of which it was sovereign, would be a grave infraction of its rights and of the neutrality which it had determined to observe. To this view Lord Palmerston unhesitatingly gave his approval. The Russians, however, entered Transylvania, apparently without protest from the Porte, but were driven out by what Count Nesselrode described as "the Hungarian rebels under the Polish refugee Bem." On the 24th of April, 1849, Palmerston advised Canning that Baron Brunnow, the Russian ambassador at London, had informed him that it "was not the intention of the Emperor of Russia, in consequence of the retreat of the Russian detachment from Hermannstadt, to order his troops to advance into Transylvania, or to take any part in the civil war now waging in that province or in Hungary." On the same day a letter was sent from the British legation in Vienna to Lord Palmerston, in which it was stated that the Austrian government, though it hoped to terminate the Hungarian conflict without Russian assistance, had decided to ask for such assistance, if it should be felt to be necessary. Two days later the Czar published a manifesto in the following remarkable terms:

By our manifesto of March 14, 1848, we announced to our faithful subjects the calamities which had befallen the West of Europe. We at the same time expressed our determination to combat our enemies, from whatever quarter they might come, and . . . to defend, without reserve, the honor of the Russian name and the inviolability of our frontiers.

The troubles and revolts have not since abated in the West. The criminal seducements that gain over the unreflecting masses, in offering them the deceitful enticement of a felicity which can never be the fruit of license and anarchy, have penetrated even to the East in the principalities of Moldavia and Wallachia, subject to the Ottoman government and bordering on our empire. It is only by the presence of our troops and of those of Turkey that order has been reëstablished and maintained there. But in Hungary and Transylvania the efforts of the Austrian government . . . have not as yet been able to triumph over the revolt; on the contrary, this revolt, swollen by bands of our Polish rebels of 1831, and of adventurers, exiles and vagabonds of all nations, has attained the most menacing proportions. In these lamentable conjunctures, the Emperor of Austria has addressed to us a request for our coöperation against our common enemies. We shall not refuse it. After having invoked, in behalf of a cause so just, the assistance of the Lord of Hosts, who alone disposes of victory, we have given our troops the order to advance, in order to choke the revolt and destroy the rash and seditious persons who propose to assail the repose of our provinces. If God be with us, who is against us! Such are, we are certain, the sentiments, the views and the hope of every Russian, of every one of the faithful subjects in our empire, on which so visibly rests the Divine protection; and thus it is that Russia will fulfill her holy mission.

It is needless to pursue the story of the conflict further. The combined forces of Austrians, Russians, Croats, Servians and Wallachs soon numbered upwards of 300,000 men. The Hungarians, pressed on all sides and divided in their councils, suffered numerous defeats, and the government was again compelled to retire from Pest, first to Szegedin and then to the fortress of Arad. On the 11th of August Kossuth and his cabinet resigned the direction of affairs and invested Görgei with dictatorial powers. On the 13th Görgei unconditionally surrendered to the commander of the Russian forces.

JOHN BASSETT MOORE.

THE ANGLO SAXON COURTS OF LAW.

THOSE who are familiar with Mr. Adams's essay¹ on the above subject may deem the present article little more than superfluous. However, a careful reading of his work and that of others, not excluding Dr. Stubbs, has led me to believe that the fundamental questions have not yet been cleared up. There is still uncertainty as to the exact nature and extent of the jurisdiction of the public Anglo-Saxon courts and as to their composition. Fully aware that scantiness of material renders the investigation difficult, I hope, nevertheless, to throw some new light on the subject.

I.

Was there a clearly-defined tribunal in Anglo-Saxon times which might be called a king's court? There is no distinct mention of any as such in our sources. Still we have, in a few cases, indications of a direct intervention on the part of the king. In a curious document Ælfred is spoken of as ordering an arbitration to settle a dispute about land.² The plaintiff, not being satisfied with the decision, wished to see it ratified by the king. The parties then went into Ælfred's presence. He confirmed the previous decision, and declared that the defendant should be admitted to the oath on a certain day. And this term was kept. It is clear that this was not strictly a law case. Besides, the whole situation is too vague to admit of drawing a conclusion therefrom. But there is extant the record of a litigation in which King Eadgar figures as a judge at the head of his "þenning-manna gemot" in London.³ Some

¹ H. Adams: *The Anglo-Saxon Courts of Law - Essays in Anglo-Saxon Law*, pp. 1-54.

² Kemble, *Cod. Dipl.*, III, 328 (the reference is always to the number of Kemble's documents) Cf. Thorpe, *Dipl. Anglic.*, pp. 169-174.

³ Kemble, *C. D.*, VI, 1258.

stolen charters were adjudged to the plaintiff. However, there seems to be no reason to believe that we have here a king's court, but rather the witenagemot acting as the highest court of the kingdom. The relevant words of the document are :

This was at London, where was King Eadgar and Archbishop Dunstan and Bishop Æthelwold and Bishop Ælfstan and the other Ælfstan and Alderman Ælfere and *many of the king's witan*.¹

Æthelred III, 11, where we read of the exclusive jurisdiction of the king over king's thegns,² probably refers to the action of the witenagemot. If the first part of the document cited shows us the king invested with but an undeveloped power of interference, the sequel reduces that power to a shadow. For on the king's death the suit was renewed in the shiremoot, which reversed the previous decision.

It would seem, indeed, that the witenagemot's decision was binding only where the parties had previously promised to abide by it.³ This is clearly illustrated by the record of a land grant "before King Æthelred."⁴ Although witnessed by the king and others, a third party who was concerned would not comply unless it were carried to the shiremoot ; to which the king refers it by his seal (*insegel*).⁵ Another document tells

¹ Essays in Anglo-Saxon Law, p. 348. That witenagemots were not unfrequently held in London is proved by Kemble's list : Kemble, C. D., nos. 159, 196, 361, 528, 580, 702 ; Leges Eadmundi, Schmid, p. 172 ; Anglo-Saxon Chron., A.D. 1012, 1016, 1047, 1048, 1050, 1055, 1065 ; Florence of Worcester, A.D. 1044.

² And nan man nage nane socne ofer cynges þegen, buton cyng sylf. Cf. Spence, Equit. Jurisdiction, p. 76 (1846).

³ Adams, p. 26.

⁴ Kemble, C. D., III, 693.

⁵ Compare a suit about land in the Historia Eliensis (ed. T. Gale : Scriptores xx, vol. ii, p. 469, c. x). Here the decision of a witenagemot (*generale placitum*) is afterwards affirmed by a shiremoot. Laughlin, in the Essays on Anglo-Saxon Law, p. 380, note 1, considers the cases in the Hist. Elien. and the Hist. Ramsiensis quite worthless as examples of Anglo-Saxon law — probably monkish forgeries of the twelfth century. Herein he goes too far. To be sure, there are many suspicious inconsistencies in the narrative of both histories, but that ought not to prompt us to condemn them categorically as forgeries. There is little in the cases cited which is inconsistent with the contemporaneous records we possess, however vitiated they have become through translation and the adoption of

us that in the reign of Eadgar a thief, having forfeited his land to the king, appealed to him for judgment. Then the "witan of the Mercians" allowed the confiscation unless the defendant should pay his *wer* to the king.¹ Here again, there is no picture of a king's court brought before our minds, but rather that of a king sitting in his local witenagemot.²

It was clearly the policy of the Anglo-Saxon kings to insist that the local courts should exercise their functions. Consequently we find that by Eadgar's laws recourse to the king is made very difficult. One of them directs that no one shall carry his suit before the king unless justice has been refused him at home. If the law is too severe, he is to seek amelioration at the king's hand.³ The first part of this law had been promulgated by Æthelstan, and was taken up in Cnut's code.⁴ As a natural corollary it followed that the king had the power of instituting or sanctioning proceedings in specific cases by writ.⁵ This prerogative, so characteristic of the Anglo-Norman procedure, does not seem to have been fully developed under the Anglo-Saxon kings. At least there are but two or three illustrations extant, to my knowledge, and these fall in the reigns of Æthelred and Cnut.⁶ There are likewise instances on record in which a king intercedes for one party, while his successor intercedes for the other.⁷

Anglo-Norman legal terminology. The present poor edition of the history of Ely and its late origin warn us to use it with caution, and not as primary evidence. As the additional cases there cited do not materially affect my results, I have refrained from using them except in the present instance.

¹ Thorpe, pp. 205-209.

² "Da gesohte Æðelstan Eadgar cyng and bæd domes.
Da ætdeðdon him *Myrcna witan land*."

³ Eadgar, III, 2.

⁴ Æthelstan, II, 3; Cn., II, 17.

⁵ Kemble, Saxons, II, p. 46.

⁶ Kemble, C. D., III, 693 (see *ante*, p. 133, note 4). C. D., IV, 929: The news of a pending suit reaching the king, he sends *his gewrit and his insege* to the Archbishop of Canterbury, and bids him to have the suit tried in the shiremoot. C. D., IV, 755, records a litigation in the shiremoot to which Tofig Pruda (probably Tofig, the sheriff of Somerset, of C. D., IV, 821) came "on the king's errand." The interpretation of this phrase decides whether the charter belongs to this category or not.

⁷ Thorpe, pp. 201-204.

If, then, the sources of Anglo-Saxon legal history will not permit us to speak of a clearly-defined king's court, we get, however, occasional glimpses of the king as arbiter over the decisions of the local public courts of his kingdom. This and no more can also be deduced from the concluding chapter of Asser's *Life of Ælfred*,¹ which, in somewhat rhetorical terms, declares the king to be the guardian of justice and equity as against the ignorance and oppression of the presiding officers of the public courts. Here we have the germ of an equitable jurisdiction which was to bear fruit under the centralizing state-system of the Anglo-Norman kings.

II.

To pass on to the public courts. The shiremoot is generally considered to have been competent to declare folkrigh in every suit.² This statement is based on a law of Eadgar which, however, names especially the *hundred court* as possessed of that competency, grouping all other courts under the general term *gemot* : "In the hundred, as in any other *gemot*, we ordain that folkrigh be pronounced in every suit."³ In the laws there are but three references to the *scirgemot*, or *scire*, *eo nomine*, in its judicial capacity.⁴ One of these has reference to an action of distress, *i.e.*, in a civil plea. It reads :

And let no man levy distress, either in the shire or out of the shire, before he has thrice demanded his right in the hundred. If at the third time he have no justice, then let him go at the fourth time to the shiregemot ; and let the shire appoint him a fourth term.⁵

The hundred court is here the important factor ; the shire-moot's action is merely supplementary. Another law also

¹ Mon. Hist. Brit., p. 497.

² Stubbs, C. H., I, p. 128 (4th ed.).

³ Eadgar, I, 7.

⁴ Eadgar III, 5 ; Cn., II, 19 ; Cn., II, 79. Eadgar, III, 5 (*cf.* Cn., II, 18) speaks of the jurisdiction of the shiremoot in the vaguest terms. Cn., II, 79, refers to defending land "be scire gewitnesse," where *scire* evidently stands for *scirgemot*.

⁵ Cn., II, 19. That such a removal to another court was not an appeal in the modern sense, has been made clear by Adams, p. 24.

deals with the action of the shiremoot in litigations about land.¹

These laws lead one to infer that the shiremoot dealt chiefly, if not exclusively, with civil pleas — an inference which is born out by the testimony of all the extant documents which record proceedings in the court of the shire.² The large number of offenses, great or small, which form the chief part of the Anglo Saxon codes, were more easily and quickly disposed of in the more frequent sessions of a smaller judicial district than the shire — in the monthly meetings of the hundred courts. The demonstration of this fact I defer for the present to take up the question of the constitution of the county court.

The paragraph which Dr. Stubbs gives to this question (Chap. V, § 50) is misleading. He begins by saying that the sheriff held the shiremoot, according to Eadgar's law, twice a year. But the law distinctly says: Let them seek twice a year the shiremoot, and let there be present the bishop and the caldorman, and there expound both the spiritual and the secular law

¹ Cn., II, 79. And he who has defended land, with the witness of the shire, let him have it undisputed during his day and after his day, to sell and to give to him who is dearest to him.

² Kemble, C. D., IV, 929. Convention about land in the shiremoot of East and West Kent, before 1011, (*supra*, p. 134, note 6) Thorpe, pp. 301-304.

Ibid., VI, 1334. Compact about land in court of Devon, 1040. Thorpe, 346-347.

Ibid., IV, 949. Similar compact in court of Hants. Hampton, 1048-1052.

Ibid., IV, 898. Similar case in shiremoot at Worcester, *temp.* Æthelr. (*et post*?). Thorpe, 375-378.

Ibid., IV, 732. Marriage-contract, *temp.* Cnuti (*Infra*, p. 138, note 1). Thorpe, 312-313.

Ibid., VI, 1358. Suit about testamentary land grant in shiremoot of East and West Kent, before 988. Thorpe, 271-273.

Ibid., III, 693. Convention about land, before 995 (*supra*, p. 133, note 4). Thorpe, 288-290.

Ibid., IV, 755. Suit about land, before 1036 (*supra*, p. 134, note 6). Thorpe, 336-338.

Ibid., IV, 847. Writ to shiremoot of Kent, from which may be inferred the action of the shire in a land plea. *Temp.* Eadw Conf.

The majority of the cases date from the last century of Anglo-Saxon rule. It may be well to state that none of the illustrations used in this article fall before the time of Ælfred. The prevalence of conventions among the cases cited warrants the observation of Adams (p. 26) that a compromise was always effected in the Anglo-Saxon courts when one was possible.

(Eadg. III, 5). To be sure, Dr. Stubbs adds that "although the ealdorman and bishop sat in it to declare the law secular and spiritual, the sheriff was the constituting officer." He refers to Kemble's *Saxons in England*. Here we read that the scirman or scirigman was, properly speaking, the holder of the county court, scirgemot or folcmot. In support of his view, Kemble refers to several charters in which the scirman, scirigman or scirgerefa appears.¹ But in no case does this officer distinctly appear as, "properly speaking, the holder of the county court." In the first case a certain Ælfelh had declared his testament before Archbishop Dunstan, and had deposited one copy with him. His widow broke the will, and

the bishop proved ownership of all Ælfelh's bequest, at Erith, by witness of Ælfstan, Bishop of London, and all the family, and of that at Christ Church, and of Bishop Ælfstan of Rochester, and of Wufsie, the priest, who was shireman (sheriff), . . . and Wufsie, the shireman, received the oath for the king since he [the defendant] refused to receive it.²

From this it would appear that one of the bishops had been the presiding, and the sheriff merely the executive officer. This is more apparent in another case, where the Archbishop of Canterbury was clearly the presiding officer in the county court.

When Bishop Godwine [of Rochester] came to the bishop's chair he found in the minster the same deeds [of church property] that his predecessor had, and therewith claimed the land. He proceeded then to lay claim to the land — until the suit became known to the king [Æthelred II]. When the charge was known to him, *he sent his writ and seal to the Archbishop Ælfric*, and bade him that he and his thanes in East Kent and in West Kent bring about a just settlement through accusation and answer.³

¹ Saxons, II, p. 158, n. 1. He refers also to the Laws of Ine; here, however, not only the scirman but *any other judge* (dema) is spoken of, nor is any gemot in particular mentioned.

² Kemble, C. D., VI, 1288. Cf. Essays in Anglo-Saxon Law, p. 350-354.

³ Kemble, C. D., IV. 929; Essays, etc., p. 360-361. The sheriff is mentioned as merely being present.

A third case records a transaction "before Cnut" in witness of Archbishop Lyfing, the convents of Christ Church and St. Austins Canterbury, and the sheriff.¹ Finally, one of the charters cited by Kemble lacks conclusive authority, as it is clearly spurious.²

All this evidence tends rather to undermine Kemble's generalization. Furthermore, he says that, while there is evidence that the sheriff sat without the ealdorman, there is no evidence that the ealdorman sat in judgment without the sheriff in the folkmot (meaning scirgemot, presumably).³ The first of these statements is true, but the second is manifestly erroneous. We have records of transactions in the shiremoot in which the sheriff does not seem to have been present; at least he does not appear among the witnesses.⁴ And his presence in the shiremoot seems by no means to have been taken for granted; for among the addressees of Eadward the Confessor's writs to that body, the sheriff is missing in the majority of cases, whereas the ealdorman (or earl, who superseded him) and the bishop always appear.⁵

¹ Kemble, IV, 732. The record has such a strong local coloring that we may infer that the matter, a marriage contract, was settled in the county court.

² C. D., IV, 872. A grant made with leave of King Æthelred is witnessed by Archbishop Agelnoth (1020-1038); yet Thorpe, *Dipl. Sax.*, p. 542, dates it 1000.

³ Saxons, II, p. 158.

⁴ Kemble, C. D., IV, 898, VI, 1334; III, 693; Farle, *Handbook*, p. 242.

⁵ In the following list the sheriff is missing: Kemble, C. D., IV, 826-828, 830, 831, 833, 841, 847, 845, 846, 848, 851-853, 855, 859, 860, 862, 864, 866, 868, 873, 876-878, 882, 884, 886-889, 892-894, 902; VI, 1319 (Cnut), 1343, 1345.

From 853 we learn that Toli[g] was sheriff of East Anglia. It is somewhat surprising that he appears without his official title in 874, 875, 880, 881, 883, 905, and 1342. But it is more significant that several writs of the same period addressed to the shiremoot of Norfolk, of Suffolk, of Norfolk and Suffolk together, or of East Anglia, of which Toli[g] was sheriff, should not contain his name or that of any other sheriff (nos. 852, 868, 873, 876-878, 882, 884).

In the following writs the sheriff, with or without his name, is one of the addressees: C. D., IV, 757 (Cnut), 829, 834-836, 837 (*cf.* 976), 839, 843, 849, 850, 853, 855, 863, 869-871, 874, 875, 879, 880, 881, 883, 885, 904, 905, VI, 1326 (Cnut). A few cases are doubtful, the name of one of the addressees appearing in the place usually filled by the name of the sheriff, but without his title. Such cases might come under the category of those writs in which Toli[g], without his title, appears. In his case one writ gives us the clue. But in IV, 835, 840, 847, 854, VI, 1323, 1325, such a hint is not given.

What, then, was the position of the sheriff in the shiremoot? I am inclined to think that he acted as the assistant or proxy of the ealdorman, or later earl. Thus we occasionally find the latter, either alone or in conjunction with the bishop, presiding in the shiremoot without the sheriff.¹ It may be asked: Who executed the decision of the court if no sheriff were present? The answer is, that the ealdorman (earl) had other officers to carry out his sentences. The generic and perhaps untechnical term for such deputies was *gingra*, which is translated by "junior." Thus this official appears twice in charters of the first half of the ninth century,² and once in the laws, where he is represented as holding pleas.³ But in an ideal view of the just judge, written at the beginning of the eleventh century, the *gingra* appears in the light of a well-known institution.⁴ Whenever the sheriff was present, he himself most likely executed the sentence of the court; but we have already shown that he was not necessarily present. There is sufficient evidence, of course, of the presence of the sheriff beside the regular officers of the shire court, the ealdorman and bishop.⁵ Whenever we do not find the ealdorman (earl) in his accustomed place, the inference is that the sheriff sat in the shiremoot in his *stead*,⁶ as suggested above. The reeve (*gerefa*), of which the sheriff (*scir-gerefa*) was a species, appears to have

¹ Kemble, C. D., VI, 1334; III, 693; IV, 898. Earle, Handbook, p. 242. In the third case the ealdorman seems to have presided alone.

² Kemble, C. D., II, 250 (charter of Berhtuulf, A. D. 841): *Liberabo ab omnibus sæcularibus servitutibus magnis vel modicis notis et ignotis regis et principis vel iuniorum eorum*. *Ibid.*, 258 (Berhtuulf, A. D. 845): *Soluta et liberata sit. . . . ab opere regis et pastu regis et principis vel iuniorum eorum*. . . . Dr. Stubbs cites a third case (C. H., I, p. 116, n. 6), but this is identical with the first. That a sheriff could also have his "*gingran*," appears from the Institutes of Polity, written after the death of King Eadgar, 975. Thorpe, Laws, *etc.*, II, p. 314.

³ Ælfred, 38, § 2. If anything of this sort happen before the king's ealdorman's officer (*gingra*), xxx shillings as wite.

⁴ F. Liebermann: Vom Gerechten Richter: *Zeitschr. für Rechtsgesch.*, V, p. 209 [8]. An ealdorman shall not choose unto himself ignorant judges nor unrighteous officers (*geongran*); p. 210 [10]. Often good judges have evil and robbing officers (*gingran*).

⁵ Kemble, C. D., IV, 802, 755; VI, 1337; III, 693. *Cf.* next note.

⁶ *Ibid.*, IV, 929; III, 693, if we may identify Alfgar "*cyninges gerefa*" with the *scirgerefa*; IV, 732.

been under the control and moral influence of the bishop, inasmuch as the latter is bidden to collect the fines incurred by the delinquent reeve.¹ The bishop, indeed, seems in Cnut's time to have been the chief source of authority in the shire-moot. Not only in looking after the execution of divine right, but also in taking care of the rights of the king, he was to be assisted by the ealdorman.² He primarily was to declare (*tæcan*) the law, secular and spiritual; in case of need the earl (ealdorman) was then to lend the force of the secular arm.³ Again, we read in the unofficial *Institutes of Polity*, composed after 975, that the bishop shall in accusations direct the purgation so that no man may wrong another, either in oath or ordeal⁴ — a function which pertained to him, indeed, in virtue of his spiritual office. The preeminent position of the bishop in the shiremoot is easily explained by his greater moral weight and his undoubtedly better knowledge of the law.

From the above we may draw the following conclusions: The shiremoot dealt chiefly, if not exclusively, with civil pleas. The presiding officers were the shire-bishop and the ealdorman, with or without the sheriff, who, if present, was probably the "constituting officer." As to actual judicial authority, it seems, at least in the time of Cnut, to have lain chiefly in the hands of the bishop, who was assisted by the secular arm of the ealdorman (earl) and the executive power of the latter or his deputy, whether a sheriff or other officer.

The suitors of the county court, says Dr. Stubbs, were the

¹ Æthelstan, II, 26, 1; cf. Eadg., III, 3. In Cnut's charter (circ. 1020) we read " . . . eac ic beode eallum minum gerefum . . . þæt hy æghwær . . . rihte domas deman be ðære scire b[iscopas] gewitnesse and swylce mildheortnesse þæron don swylce þære scire b[iscopas] riht þince." Earle, Handbook, p. 230.

² "And eac minum ealdormannum ic beode þæt hy sylstan þam b[iscopum] to Godes genhtum and to minum kynescyfe" Earle, p. 230. Stubbs, S. C. p. 75.

³ "Gif hwa swa dyrstig sy, gehadode oððe læwede, Denisc oððe Englisc, þæt ongean Godes lage ga and ongean mine cynescyfe oððe ongean worold riht and nelle betan and geswican æfter minra b[iscopas] tæcinge, þon[ne] lidde ic þurcyl eorl . . . þæt he ðære unrihtwisan to rihte gebige gyf he mæge" Earle, p. 230; Stubbs, S. C., pp. 75, 76. Here *tæcan* is evidently used in the same sense as in Eadg., I, 7; cf. Cn. II, 18.

⁴ Thorpe, Ancient Laws, II, p. 312, chap. vii.

same as those of the hundred court : all lords of lands, all public officers, and from every township (the parish priest) the reeve and four men.¹ The lords of lands, he says, were called in this aspect, scir-thegns. But this designation does not seem to have had any *technical* meaning. The "thegns" of Herefordshire, for instance, had the same status in their shiremoot as the "scir-thegns" of Hampshire in theirs. If there had been a difference, why should the address of writs invariably run in the name of the "thegns" of such and such a shire? Furthermore, in the witness clause of the writs the expression "all the thegns"² occurs much oftener than "all the scir-thegns."³ How many of these thegns, or lords of lands, were in the habit of coming to court, the sources do not permit us to say. Still it will be conceded that suit of court was considered less a right than a duty.⁴ Who are meant by "all the public officers" is not clear. Finally, the authority for the statement that the parish priest, the reeve, and the four men of every township sat in the shiremoot, appears scanty at best.⁵ It is based on a passage in the private legal compilation called The Laws of Henry I,⁶ and this Dr. Stubbs has misinterpreted. What the law really says is, that in the county court (1) the lord may answer for his land himself ; (2) his steward may answer in his stead ; (3) *if neither of them could be present*, then the reeve, the priest, and four of the better sort of the township *might answer* for the vill themselves.⁷ Besides, had this deputation sat *regularly* in the shiremoot, why is the plain reeve, or gerefa, never mentioned in the address of the writs?⁸

¹ Stubbs, I, p. 128. Cf. I, p. 115.

² Kemble, C. D., IV, 785, 728, 789, 802, 821 *et passim*.

³ This phrase occurs only three times : *ibid.*, IV, 820, 949 ; VI, 1337.

⁴ F. W. Maitland (*English Historical Review*, III, pp. 417-421) has clearly shown this for Anglo-Norman times, and it was probably the same before the Conquest.

⁵ What Dr. Stubbs (I, p. 128, n. 4) cites from Domesday is not to the point. Cf. W. J. Ashley, "The Anglo-Saxon Township," *Quart. Journ. Econ.*, VIII, 3, p. 361, n. *

⁶ Leges H., I, c. 7, § 9 ; cf. § 8.

⁷ J. H. Round : "The Suitors of the County Court," *Archæol. Rev.*, II, p. 67.

⁸ But this may perhaps be because he was generally a villein. J. H. Round, *Domesday Studies*, II, p. 551, speaks of a writ of Henry I addressed to the

Dr Stubbs himself concedes that the point is left questionable in the laws, but holds that it is proved by later practice. For this the usage under Henry III is appealed to. The four law-worthy men of every township in Henry II's Assizes of Clarendon and Northampton, chap. 1, might also have been cited in this connection. But such late data ought to be used only with great caution, as secondary evidence. Still, may we not, without relying too much on the argument of "archaic survivals,"¹ assume with tolerable certainty that the author of the so-called Laws of Henry I had inaccurately expressed an Anglo-Saxon idea of popular representation, such as appears in the oath of "totius centuriatus, presbiteri, praepositi, vi villanorum uniuscuiusque villae" in furnishing the returns for the Domesday Survey of Ely?² At any rate, I cannot but think that such popular deputations may under certain conditions have existed before the Conquest, and that the Conqueror was politic enough in this as in other cases, to adapt, if not to adopt, an existing institution. The lords of land continued as before to comprise the landed or feudal element, the judges of the county court, whereas the people of the townships occasionally formed the representative element.³

"reeves" of Sussex. But the "*omnes ministri*" mentioned here more likely correspond to the "*ealla þegnas*" of the Old English writs of Edward the Confessor, who, in fact, sometimes appear as "*ministri*" in their Latin dress. See Kemble, C. D., IV, 833, 853, 867, 903, 904, 906.

¹ See on this point W. J. Ashley, *op. cit.*, p. 361.

² Domesday Book, IV, f. 497. Stubbs, S. C., p. 86.

³ J. H. Round, *l. c.*, p. 68. Dr. Stubbs (I, p. 128, n. 4), to illustrate the participation of the popular element, the ceorls, in the shire-moot, cites some charters. In the first (Kemble, IV, 732) occurs the phrase, "Dyssa þinga is gecnæwe ælc dohtig man on Kænt and on Suð Sexan on þegenan and on ceorlan" (of these things are aware all the dohty men of Kent and Sussex, both thanes and ceorls). But does it follow that they were present at a court held in Canterbury? The phrase seems rather a formula expressing general assent. Cf. Kemble, VI, 1288. Dr. Stubbs also calls attention to the direction of royal writs to the thegns of the shire, "twelf hynde and twyhynde" (Kemble, IV, 731, Earle, pp. 229-232). Only the former of the documents cited is, properly speaking, a writ. The other is Cnut's policy of government, which naturally enough would be directed to all his officials and to the people at large. Moreover, the ceorl is not mentioned by name in either of the documents; and the twyhyndeman, who is mentioned, had the same status as the ceorl according to a compilation of Mercian laws only (Schmid, App., VII, c. 1, § 1, c. 11, § 1). Are we, then, justified in considering the ceorl as regularly identical with the twyhyndeman?

III.

The jurisdiction and organization of the hundred court have received more satisfactory treatment than those of the shire court. Still there is room for correction. The hundred court, say the laws, could declare folk-right in every suit. It seems to have been the unit of the judicial system. It was to meet every month; the summons to the litigants was to be issued seven nights before. A threefold contempt of summons on the part of the accused brought confiscation on the culprit.¹ Every one was, in the first instance, there to seek suit. If, however, the shiremoot dealt chiefly with the more important suits about land, it seems reasonable to suppose that the lesser civil cases,² and particularly the constantly recurring criminal offenses, would be left to the hundred court, where meetings were more frequent, and hence decisions more speedy.

Who was the presiding officer and what was the composition of the hundred court? The question has been vaguely answered. Dr. Stubbs justly doubts whether the ealdorman of the shire, the sheriff, or the bishop sat regularly in the hundred court at any period.³ The large number of hundreds in some shires would make it impossible for those officers to attend each of the monthly meetings. Besides, the ealdorman, as civil and military head of his shire, and the bishop, as the spiritual chief, would be fully occupied with their own duties.⁴ The sheriff, on the other hand, seems at times to have been the presiding officer of the hundred. The laws are silent on this point, but there is a writ of Eadward the Confessor in which the sheriff figures as one of the regular holders of the hundred

¹ Eadgar, I, c. 7. Æthelstan, II, § 20. Eadgar, III, c. 7; *cf.* Cn., II, 25.

² To my knowledge, we have only one illustration, and that is a mere reference, of the judicial powers of the hundred court in the Anglo-Saxon charters (Thorpe, p. 427, *circ.* 1066). The following extract from Domesday may refer to an actual decision of the hundred court: "In eadem villa idem invasit iiii virgatas terrae super regem . . . *per iudicium hundred.*" Domesday, II, f. 99.

³ Stubbs, I, p. 116.

⁴ Still, in the ordinance of William I separating the spiritual and temporal courts, the bishop or archdeacon appears as holding pleas in the hundred court in spiritual cases. Stubbs, *Select Charters* (4th ed.), p. 85.

court.¹ Furthermore, an officer called [ge]motgerefa appears in this writ as a functionary of the hundred court. Gerefa, or reeve, was apparently the generic term for a class of officials one of whose duties was to preside at this court. Of this class, the scir-gerefa, or sheriff, was a species which took its distinctive title from its connection with the court of the shire, though its activity was not necessarily restricted to this. If the ealdorman had his deputies, or *gingra*, we may suppose that the reeves, who were much more frequently called upon to preside at a court, also had theirs.²

As to the suitors of the hundred court in Anglo-Saxon times, we have no direct evidence. What has been said on this point in regard to the court of the shire, applies equally to the hundred court. It is indeed likely that many of the land-holders had already in Anglo-Saxon times acquired that immunity from attendance at the hundred and shire courts, which so many of them enjoyed after the Conquest.

To sum up: The hundred court of Anglo-Saxon times was the judicial unit, deciding in both civil and criminal pleas. Its presiding officer was taken from a class of officials called reeves, and its suitors were the same as those of the larger local court, the shiremoot.

FRANK ZINKEISEN.

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¹ Kemble, C. D., III, 840. The king grants Hornemere hundred to Abingdon, "so that no sheriff or moot reeve have there any investigation or court unless at the abbot's bidding and wish." *Ibid.*, IV, 850, in which the *sheriff* is commanded not to levy distress within a certain hundred without the consent of the abbot, is suspicious, on account of the unheard-of title of the king — "Eadward cing ofer Engleðeod."

² *Supra*, p. 139, note 2. It is possible that the hundredes man, or hundredes-ealdor, was the presiding officer of the hundred court, under another and popular name. At any rate, he was the police officer of the hundred, according to Eadgar's constitution of the hundred.

REVIEWS.

The History of Trade Unionism. By SIDNEY and BEATRICE WEBB. London and New York, Longmans, Green & Co., 1894. — 558 pp.

Labor unions have played so important a part in recent English history that it is remarkable that no one hitherto should have attempted to study their history and to estimate from every point of view their influence upon industry and politics. We have had all manner of essays and monographs of more or less value. But the present work of Mr. and Mrs. Webb may be declared to be the first really adequate history of the subject. The authors have had unique advantages in preparing for their task. Mr. Webb is well known as one of the Fabians, as the author of numerous monographs on socialism and the labor problem, and as one of the more important leaders in political and social reform among the working class. Mrs. Webb has become almost equally well known through her work on the coöperative movement, written while still Miss Potter, and through her advocacy of various reforms among women wage-earners. Each has had a good economic training; each has spent several years delving in the public and private libraries of England; and each has kept in touch with the actual labor movement during recent years. It is not surprising, therefore, that the result should be a signally important and wholly admirable work.

The preliminary chapter is devoted to the origin of trade-unionism. Although the authors have not attempted any independent investigation into the history of guilds, they are well acquainted with recent literature. They show their comprehension of the essential difference between the mediæval and the modern industrial system, by pointing out once again how impossible it was for the modern trade-unionism to be a direct outcome of the old craft guilds. They combat, and with seeming justice, Professor Ashley's recent statements about the journeymen's guilds of England; and they again bring into prominence the fact, which some of us lately seem to have lost sight of, that there could be no serious clashing of interests between master and workman in the middle ages. The origin of trade-unionism they find in the divorce of the worker from the ownership of the means of production. But whether trade-unionism would have

been a feature of English industry even without the steam engine and the factory system, as the authors seem to hint, is perhaps more open to question. Although this part of the work has already been well done by Held, Brentano and Toynbee, the authors give an exceedingly lucid picture of the efforts made by the laborers to maintain their standard of life through the enforcement of antiquated measures, like the limitation of apprenticeship and the judicial fixing of wages. It was not until the last years of the eighteenth century that the Combination Acts were made general and the real struggle began. Before that time, as the authors clearly show, Parliament was not distinctly opposed to the laborers, but the artisans themselves mistook the remedy and attempted the impossible.

The period from 1799 to 1825 is described as that of the struggle for existence. We have become fairly well acquainted with the terrible degradation of the workers on the one hand and with the violence and turbulence of the illegal combinations on the other; but the details of the struggle which led to the repeal of the Combination Acts have not been familiar. This repeal was due above all to the master-tailor Francis Place, whose manuscript account of the whole movement, preserved in the British Museum, has been utilized with signal success by Mr. and Mrs. Webb. It would take us too far astray to recount here the various steps in the struggle — the short-lived victory of 1824, the subsequent reaction, and the final establishment by the act of 1825 of the right of collective bargaining, involving the power to withhold labor from the market by concerted action. With this the first great step in advance had been won.

But the anticipated millennium did not appear; the crisis of 1825 and the ensuing years of depression brought to nought many of the high hopes. The years from 1829 to 1842 are described as the revolutionary period, marked at its beginning by more ambitious attempts at consolidation. Incidentally the authors make a good point by calling attention to the old but much abused distinction in nomenclature. A trade union, as the word implies, is a union of the workers in a single trade, a trades-union is a union or federation of various trades. Place himself was the greatest advocate of trade-unionism, but a thorough opponent of trades-unionism. The early thirties saw the real birth of the trades-union idea, which for the time attained considerable proportions and aroused great fear and excitement among the employers. The government was alarmed, and the boasted supremacy of the unions was shown to be wholly without reality when in 1834 the six Dorchester laborers were

sentenced to seven years' transportation for the mere act of administering an oath. The curiously mistaken opinions of the economists at the time are reflected in a remarkable report unearthed by the authors, in which the writer, Nassau William Senior, uses the most violent language against the principle of trade-unionism and goes so far as to recommend the confiscation of the funds of the organizations. The government did not dare to submit this report, but showed its opposition none the less determinedly. The rise and fall of the "New Unionism" from 1830 to 1834 proved that the workers would have to start out again on different lines. The magnificent dreams of Owen are alluded to, but it is well shown how the political situation was the paramount one, forcing the laborers into Chartism. Political changes first, as the substratum of future industrial reform, became the watchword of the laborers.

From 1843 on the trade-unionists laid aside all their grand projects of social revolution. They set themselves resolutely to resist the worst features of the legal and industrial oppression from which they suffered, and they slowly built up for this purpose organizations which have become integral parts in the structure of the modern industrial state. After the triumph of the free-trade movement, the great separate unions developed, like those of the engineers, the carpenters, the cotton spinners and others. Large funds were collected, and strikes were no longer the sole end of the unions' existence. The history of the struggle between the engineers and the masters in 1851-52 is well told, and the influence of the small band of eminent men who composed the Christian Socialists in effecting a change in public opinion receives due recognition. The next few years marked the building up of the different societies, until in 1867 the unions were again assailed by a double danger. In the first place the Sheffield outrages and the fierce opposition of the employers threatened to bring about a change in the criminal law unfavorable to unionism; and secondly, the courts themselves now uniformly held that the law gave no protection to the property of the unions against embezzlers. It was at this crisis that men like Frederic Harrison, Professor Beesley, Thomas Hughes, Henry Crompton and J. M. Ludlow stepped in to brave the storm of public opinion and to secure for the laborers their legal and industrial rights. The commission of 1867 brought stone, not bread, to the enemies of trade-unionism, and it was only a few years later when the unions won their final emancipation. In 1875 the Criminal Law Amendment Act was unconditionally repealed and the Employers

and Workmen Act completed the legal recognition and final victory of the unions. Public opinion had been entirely won over.

The ensuing period until 1885 is concerned chiefly with sectional developments, while from that time on we notice the growth of the socialistic movement among the unions themselves. It is during this last period that the authors, as they confess, find the most difficulty in being impartial, for they themselves have had a considerable share in the movement, and they recognize the fact that it is too soon to judge of the results of the new unionism. But the details of the development are in themselves of great value.

From the preceding survey it will be seen that Mr. and Mrs. Webb have attempted to confine themselves to the recital of the chief events in the external and internal history of trade-unionism, without going much into the deeper problems as to its justification, spirit and policy. These they reserve for the succeeding volume, which we shall all await with impatience. But enough is contained in this first installment to mark the authors as by all means the ablest exponents of the working-class movement that England has yet seen. It is to be hoped that in a future edition the history of the agricultural laborers will be treated with less brevity.

It would be interesting, were it possible here, to point out the many lessons this first volume contains for political economy in general and for the American public in particular. We in the United States are in very much the same stage that England reached over a generation ago. Here also trade unionism is frowned down by public opinion; here also its economic advantages are ignored by men of the brightest intellect and most upright character; here also the unions themselves are in somewhat the same formative condition as their English predecessors of two or three decades ago. The one great difference is that the economists have learned a lesson, and that, whereas the English economists were formerly the opponents of unionism, the American economists are at present almost its only supporters. But a history like that recorded in the work before us is calculated to give us new faith and new hope. It shows that the problems of the young America are not fundamentally different from those of the old England; it proves that much of what we feel tempted to deplore is nothing but a necessary step in the onward march to greater freedom and industrial peace. No thoughtful American can afford to be ignorant of this history; no true economist can fail to profit by its lessons.

EDWIN R. A. SELIGMAN.

La Popolazione e il Sistema Sociale. Di FRANCESCO S. NITTI.
Turin and Rome, L. Roux e C., 1894. — 212 pp.

This book consists of two quite distinct parts — an exposition of the doctrines of previous writers on the subject, and a development of the author's own views. The first part is the better of the two. The second, which attempts to overthrow the doctrines of Malthus, is even less successful than such attempts are apt to be, because the author fails to grasp the real points at issue. In the first place, his assumption that the amount of food in a country is proportionate to its wealth as measured in money, is quite incorrect, and vitiates all statistical reasonings based upon it. In the second place, the attempt to disprove Malthus's assertions as to the tendency of population to increase, by reasonings as to its actual increase, is quite futile. To the Malthusian the failure to increase is itself the evidence of the operation of those positive checks on which his theory lays stress. Finally, the fact that slow increase of population is associated with large *per capita* wealth, instead of disproving the Malthusian theory, as Nitti supposes, tends rather to confirm it.

There is quite a pitfall at this point, into which warier reasoners than Nitti have stumbled. The main practical question, according to the opponents of Malthus, is this: Is it misery or comfort that causes a high birth rate? In the latter case Malthus is right; in the former case he is wrong. They then show that a high birth rate is associated with misery rather than with comfort, and think that they have proved their case. Only let everybody have the chance for comfort, they say, and the birth rate will take care of itself. The trouble with these writers is that they mistake concomitance for causation. It is quite as probable that the comfort which is habitually found in connection with a low birth rate should be its effect as its cause, in which case all Nitti's facts react against his own line of argument. It is, in my opinion, even more probable that both are the effects of a common cause: that the people with the low birth rate and high comfort are those with a calculating temperament and a code of morals based upon it; while those with the high birth rate and low comfort are those with an emotional temperament and a corresponding code of morals. If this is true, it leaves the Malthusian theory slightly modified in its form of statement, but in its essential points reinforced rather than weakened.

ARTHUR T. HADLEY.

Trusts, Pools and Combinations, as affecting Commerce and Industry. By J. STEPHEN JEANS, M.R.F., F.S.S. London, Methuen & Co., 1894.

It is gratifying to notice the recent attempts to consider the problem of industrial combinations from a broader standpoint. It is coming to be generally recognized that trusts, pools, combinations and coalitions are manifestations of the same fundamental development, that they differ only in intensity, not in principle, and that they are products of natural causes, not arbitrary inventions of rapacious monopolists.

Mr. Jeans has gathered a number of facts about some of the most notable combinations of the day. In his prefatory note he states that "he does not consider himself called upon to pronounce very definite approval or condemnation of the trust-system generally", he wants "to state what he knows about them without conscious partiality or prejudice."

It does not appear that this method has produced very good results. The author writes under the decided influence of the old orthodox school, although he wants to rid himself of its teachings to a certain extent. He cannot draw conclusions, or even group facts, without a relapse into the old methods. He is apparently a free-trader, an enemy of all state interference, and a believer in the law of automatic regulation of supply and demand under a system of free competition. He recognizes that combinations are to-day unavoidable, but he apparently would like to have them restricted as much as possible; and though opposed to state interference, he would hardly object to legislation in this direction if it could be made effective. Therefore he devotes the last chapter to a statement of the evils of the trust system, but none to a fair record of its advantages. It may be questioned whether this is consistent with his professions of impartiality.

Still more serious objections might be raised against the work. I do not feel satisfied that he has been able fully to master the actual meaning of the problem, either theoretically or historically. The "corner," e.g., is something fundamentally different from the pool or trust, as it is devoted only to speculative purposes. So it was restricted by mediæval legislation, as was all speculation. The trusts, on the other hand, aim at a regulation and organization of production, and correspond in a certain way to the mediæval guilds, which were recognized and regulated by law. This Mr. Jeans does not point

out. Moreover, he gives a discussion of futures, or options, which have actually nothing to do with the general movement, except in so far as they are occasionally made use of for cornering purposes; the economic significance of the dealing in futures lies in a totally different direction.

As to the historical treatment, the author's information has apparently been insufficient. The remarks about olden times, quotations from McPherson, *etc.*, are probably only intended to give a little scientific veneering to the essay; a thorough discussion of the problem would require a far wider knowledge of historical facts, and the citation of more appropriate examples. It is not true that "the common-law or the statutes took the part of the seller against the buyer" (page 11); he quotes this from Bastiat, but Bastiat was talking about France. What Mr. Jeans means by drawing a parallel between the Standard Oil Trust and the Hanseatic League (page 96) is hard to understand. Their principal aims and their organizations were so entirely different that the comparison rather obscures the problem. Not to mention numerous errors as to facts (the Standard Oil Trust was dissolved in 1892, not in 1890; the Reading combination originally gave a very strong and favorable movement to the securities of the companies concerned, and it collapsed afterwards for other reasons, which are not mentioned at all, *etc.*, *etc.*), his information often seems to be derived from very unreliable newspapers, while he seems unacquainted with the very important publications on trusts by W. W. Cook. The position of the workingmen as producers, or better, as parts of the machinery of production, does not seem to be sufficiently discussed. What justifies the suggestion (on page 185) that since 1888 there have been troubles between the trusts and their employees? The history of the crisis of 1893 points in just the opposite direction.

These are only a very few of the objections which are called forth by almost every page. More valuable are some of the chapters on English affairs, like that on the Australian Shipping Pool in London.

The book may be welcomed as an attempt to discuss the question, but it is to be hoped that in a second edition it will be radically changed. In its present shape it does not add much to scientific knowledge, and a popular book, which it is probably intended to be, ought to be written with more care, perhaps, than a scientific essay, and certainly only after a far more complete mastery of the subject.

ERNST VON HALLE.

Eight Hours for Work By JOHN RAE, M.A. London and New York, Macmillan & Co., 1894. = 340 pp.

For three-quarters of a century the demand for a shorter working day has been a prominent phase of the labor movement. It has been advocated for all sorts of reasons. It has been generally opposed by the employing class, and until recently by economists. The chief ground of opposition has been that to reduce the working hours would diminish the *per diem* product, and consequently increase the cost of production and diminish profits. Although it is true that the output per laborer is greater to-day with ten hours than it was in 1820 with fourteen hours, the capitalists refuse to believe that to reduce the working day to eight hours would not lessen the output per laborer. In short, they refuse to believe that, other things remaining the same, eight hours work will equal ten hours' work. Consequently, we find among employers a willingness to reduce the hours of labor only if the laborers will agree to a proportionate reduction in wages.

Mr. Rae has assumed the task of proving that the reduction of the hours of labor will not reduce the output, insisting that the laborers' productive capacity will increase directly as their working day is shortened. He says (page 13):

The question of questions, therefore, in connection with any proposed further reduction of the hours of labor is the question of the probable effect of the change on the personal efficiency of the work people. If short hours mean short product, they would mean short profits and short wages too.

He very properly makes much of Robert Owen's experiment at New Lanark, where the working day was reduced in three installments from sixteen to ten and a half hours. In such instances the effect would be very much as Mr. Rae contends, because the working day was then so long that the last three or four hours' labor was performed under conditions of increasing physical exhaustion. The proof of this was amply set forth in the testimony before the Parliamentary committees from 1815 to 1845, where the overseers testified that it was necessary to whip children to prevent their going to sleep and falling into the machinery. Wherever the length of the day is such as to compel laborers to continue work after physical exhaustion begins, a reduction of the hours of labor will be followed by some increase in the average hourly output. This, of course, is what took place in all the reductions in the hours of labor in the first half of

the century in England, and in nearly all reductions up to date on the continent and in some states in America.

But this does not justify the assumption that the same relative increase of product per hour will follow a reduction from ten hours to eight. If the doctrine were true that the laborer would, by an increase of his activity, augment the product directly as the day is shortened, there would be no real advantage in shortening the working day, because a reduction in the hours would simply mean a proportional increase of the pressure upon the laborer. If there is any good reason for reducing the hours of labor at all, it is to lighten the burden of labor. To deny that is to take away the economic and social importance of the short-hour movement. The real economic improvement of society consists not in making laborers do more in a shorter time by working harder, but in enabling them, through the application of science in improved methods, to produce more in a shorter day with less exertion.

The fault of Mr. Rae's book is his evident disposition to minimize the influence of machinery and quite perceptibly to exaggerate the effect of increased personal effort on the part of the laborers. Thus in referring to the greatly increased product per laborer in the cotton industry of Lancashire, he says: "More than three-fourths of the whole came from closer attention and greater accuracy of work on the part of operatives." To any one at all familiar with the history of cotton manufacture this is an obvious overstatement. For instance, until the introduction of the weft-fork, which was not until late in the fifties, a weaver could mind only two looms, and those running at the low speed of probably sixty or seventy picks per minute. After the introduction of the weft-fork, which stopped the loom whenever the filling thread broke, and thus saved a great deal of turning back and readjustment, three and four looms became the rule for men and some women in Lancashire, and instead of sixty or seventy picks a minute, many looms now run at the rate of one hundred to one hundred and twenty. Thus, the number of looms which a person can mind and their rate of speed have been nearly doubled, not by the increased dexterity of the weavers, but by improved machinery. In further proof of this, the men weavers in the United States mind eight looms, and women six and sometimes eight. Mr. Rae would hardly claim that this is due to the greater intelligence and dexterity of the American weavers over the English, since the very weavers who are minding six and eight looms in Fall River, Lawrence, Holyoke and Cohoes are chiefly English and Irish. The

weavers who could mind only four looms in Lancashire can mind eight in Massachusetts. This shows that it is the economic conditions of the factory and not the physical quality of the man that makes the difference.

If we turn to purely hand labor, the error underlying Mr. Rae's contention is more obvious. On page 177, in a complaining tone, he quotes a master builder as saying :

Where it used to be the custom for a good bricklayer to lay a thousand bricks a day, three hundred or four hundred is about the usual thing now. The cost of labor has increased from forty shillings a rod, which it was thirty-five years ago, to eighty shillings or ninety shillings now.

Mr. Rae severely censures the bricklayers for not laying as many bricks now as formerly. But why this great difference between bricklayers and factory operatives? Are bricklayers a distinctly more shiftless class than factory operatives? If this were admitted, it would be fatal to Mr. Rae's whole contention, which is "that the higher the wages the greater the intelligence, and the greater the intelligence the greater the dexterity and activity of the laborers." Bricklayers everywhere receive nearly double the wages of factory operatives, and hence ought to show a greater increase in productive power with the shortened day; but, as everybody knows, they do not show this.

Economically, Mr. Rae is really very much in the same position as are Edward Atkinson and Mr. Schoenhof regarding the question of labor cost in America. They argue that, because in the long run high wages give a low cost of production, a diminished labor cost must immediately follow a rise in wages. This conclusion is entirely false, as Mr. Rae's facts conclusively show. On the strength of this error they have advocated free trade in America, asserting that the higher wages here necessarily create a proportionately greater personal efficiency of labor and hence a lower cost of production — an assertion which practical men know is not true.

There is, of course, some truth in Mr. Rae's claim regarding the hours of labor, as there is in the Atkinson-Schoenhof claim, but the influence of this fact is very slight, and diminishes after a certain degree of proficiency has been reached. The error in both cases is in attributing the increased productive power to the wrong factor. It is generally true that in the long run the product per day has increased as the hours of labor have been reduced; it is also true that wages have increased with the shorter working day; but it is

not true that the individual exertion of the laborer has increased as the hours diminished and wages advanced. On the contrary, the great fact of this century is that it is the increased use of capital in various forms that has increased the *per capita* product and made possible a shorter day, higher wages, easier work, cheaper products and greater profits.

It should be kept prominently in the foreground that the primary object of reducing the hours of labor is not to benefit capitalists, but to improve the condition of laborers by making each day's drudgery a little less, and each day's social enjoyment a little greater. The social elevation of the masses is of itself an all-sufficient reason for shortening the working day or changing any other industrial or social institution. The question of the output belongs to the capitalist side of the situation. It is his economic function to see that in various ways sufficient new economies are introduced to keep up and even to increase the output. And this is what has always occurred in a greater or less degree.

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Die Arbeitsverfassung der Englischen Kolonien in Nord-Amerika.

Von A. SARTORIUS VON WALTERSHAUSEN. Strasburg, Karl J. Trübner, 1894. — xv, 232 pp.

In writing this book the author had avowedly three ends in view: first, to present a general picture of the legal and actual position of the common laborer in the thirteen English colonies; second, to bring to light the real connection between the several systems of labor — indentured servants, wage-earners and slaves; and, finally, to prove that it was really the different forms of production and exchange growing up in the colonies that moulded these three labor systems into their final form.

On the whole the work is well done. Rather too much space, from the American standpoint, is devoted at the outset to describing the exact location and early development of the colonies. The system of indentured servitude is then very clearly explained from the standpoint of both the master and the apprentice. The causes for the slight development of the wage-system in these early days are also satisfactorily set forth.

Professor von Waltershausen's account of the Mercantile System and its effect upon the institution of slavery in the colonies will strike

one as by far the best thing in the book. The point of view is interesting and certainly brings to light instructive facts. In general, however, the author's treatment of the origin and growth of slave labor in our country is unsatisfactory. There is too much description of well known conditions, with only here and there an attempt to explain matters. This is especially the case with the chapter which is devoted to the treatment of the slaves by their masters and overseers. Surely the long biography of an imaginary Congo negro is out of place in a book of this kind.

Professor von Waltershausen adds a long list of authorities to his work and gives liberal excerpts therefrom, but generally to the point. In looking over the list one finds that early histories and books of travel have for the most part been relied upon, while the Colonial Records and records of the Board of Trade seem not to have been carefully examined. On the general development of the colonies later American works than those of Bancroft and Hildreth do not seem to have been consulted by the author — which is strange in the light of the recent work so admirably done in this field.

Professor von Waltershausen's book is throughout interesting and instructive in style, as well as in plan and method. Works on American economic history are, one might almost say, crying needs. Professor von Waltershausen has set us an admirable example. His latest book should inspire us to continue the work along these lines.

LINDLEY M. KEASBEY.

BRYN MAWR COLLEGE.

Geschichte des Antiken Kommunismus und Socialismus. Von DR. ROBERT PÖHLMANN. Vol. I. Munich, C. H. Beck, 1893. — xvii, 618 pp.

The importance which the discussion of socialism has attained is suggested by the appearance of such a work as this, which devotes a volume of more than 600 pages to the discussion of Greek socialism alone. What the scope of the completed work is to be we are not told; if carried out on the present scale, it will apparently be the most important work in existence on the subject.

Like all such undertakings, the present work has its disadvantages. It is exhausting as well as exhaustive, and the laboriousness of the writer's style is unrelieved by even the faintest literary instinct. But form, proportion, elegance, are so generally lacking in such German publications that we are more surprised by their presence

than by their absence. It is no small tribute to the substantial value of books like this that we are compelled so quickly to forget their defects.

Without defining his terms, the author seems to use "communism" to designate socialism in practice, the term socialism being restricted to theoretical or philosophical proposals. Under the former head are considered primitive communism, the communism of the Homeric epoch, and the communistic states of Lipara, Magna Græcia, Sparta and Crete. The view presented is decidedly at variance with that ordinarily held. While the earliest social organization is undoubtedly communistic, a careful examination of the Homeric poems presents indisputable proof that this primitive organization had been long outgrown and that the institution of private property had attained a paramount importance in the social economy of the period. Even the customs which suggest the earlier economy are shown to be survivals whose significance is often lost. The argument is sometimes controversial in tone, but it could hardly be more convincing.

But if the early communism had died out before the days of Homer, what shall be said of the theory that the communistic states of Lipara, Crete and Sparta were survivals of this earlier economy? How are such survivals to be explained in the midst of civilizations so conspicuously individualistic? How did one part of Hellas get the start of another part by so many centuries? Above all, how did the older economy "survive" in colonies sent out by states that had abandoned that economy? Dr. Pöhlmann's answer is that this later communism was in no way like the earlier. In its most essential traits, as in the land system of Sparta, it shows its artificial character, — a character sufficiently accounted for, moreover, by the military organization and function of these states. There is no more admirable chapter in the book than that on the "Social State of the Legends and the Socialistic Natural Right." The history of Sparta, the author points out, first took definite form in the hands of social reformers who wished to arrest the decay of the state and the insidious encroachments of the surrounding wealth-worship. The period was as fruitful in social theories as the eighteenth century. Plato, Aristotle and Isocrates had filled the minds of men with communistic ideals of a perfect state. The historical temper was unknown. To the reforming zeal of the day what was more natural than that these ideals should be all unconsciously read back into the history of Sparta, thus giving to the cause of reform the support of tradition and the authority of the mighty Lycurgus? This not only might but

must have happened. It necessarily follows, according to Dr. Pohlmann, that all arguments drawn from the Lycurgus tradition are untrustworthy, and he then proceeds with masterly skill to winnow them of their chaff.

Athens has often been cited as furnishing examples of a partially socialistic economy, but our author implies his disapproval of such an analysis. Athens was "atomistic-individualistic," illustrating the tendency of unbalanced individualism to destroy all social cohesion, to develop destructive egoism and transform the noble art of government into a scramble of individuals over the spoils of public plunder. The parcelling out of public resources among individuals was not socialism, but individualism gone mad.

How desperate the prospects of an individualistic organization of society must have seemed in the light of Athenian experience, is indicated by the fact that two thinkers so radically different as Plato and Aristotle should have joined in the most unqualified attack upon it that has ever appeared in human literature. The most of Dr. Pohlmann's large volume is devoted to a consideration of their social philosophy. Here again the accepted interpretations, after being acutely analyzed, are pronounced unsatisfactory. It seems incredible that anything so long known and discussed as Plato's *Republic* should be the subject of fundamental misconception, but it is difficult to resist this conclusion.

The features of Plato's scheme — the rule of reason and virtue, the community of goods and wives, the equality of the sexes and the detailed autocratic socialism of the whole — are familiar. The prevailing criticism, as represented by Zeller, is almost as well known. It charges Plato, first, with inconsistency, in that he leaves undeveloped the whole industrial régime of the state while going into the utmost detail regarding the training and choice of state functionaries. The inference is either that he was unable to conceive of a socialistic régime beyond the point of "glittering generalities," or that he intended to leave the industrial portion of the community in unregulated individualism, caring only for the development of the ruling *élite*. The superficiality of these conclusions is proved by the simplest reference to Plato's own statement. He fortunately tells why he neglected the details of industrial organization. While believing that they should be under the absolute control and minute supervision of the state, he does not believe in any theory of their management which would hamper those to whom the duty of management is entrusted. In other words, Plato does not believe in a constitu-

tional government. The safeguard of the state lies in the character of its rulers, and these, once chosen with all possible precautions, are not to be hampered in the exercise of that higher wisdom, the proud possession of which determined their choice.

The further claim that Plato sacrificed the individual to the state is equally unfounded. He *subordinated* the individual to the state, but only in the conviction that so he would attain his highest *individual interest*. Statements on this point abound.

Finally, we are told that Plato sacrificed the many to the few. This allegation is made both by way of censure and by way of praise, according to the bias of the critics. They are divided, like the society of which they are a part, into two schools, the aristocratic and the democratic. The one seeks the *intensive* development of humanity, but its gains are insignificant because confined to an insignificant minority. The other seeks the *extensive* development of humanity, but fails of its end for lack of differentiation. The infinitesimal progress of an infinite number is of doubtful significance. Plato, first among social philosophers, appreciated the importance of division of labor, and carried the idea into every department of social life. For him to sympathize with a leveling democracy was impossible. But if he believed in specializing the better few for the higher functions, no man more than he avoided the egoism of aristocracy. It is one thing to set aside the few for the sake of humanity; it is another thing to set aside humanity for the sake of the few.

Full of his "divine inspiration" Plato embarked for Syracuse at the invitation of its young ruler, whose interest in the ideal state seemed to promise much for its realization. We hardly need the vague tradition to tell us the inevitable result. It was with less confidence in the beneficence of absolute power and a keener sense of the inertia of human nature, that Plato in later years again tried to solve the problem of social organization. In *The Laws* we see the same Plato with the same ideals and the same temper, but his reliance is otherwise placed. The election of officers shows his distrust of kings, while the intricate system of indirect election shows his old distrust of democracy. But this state has a constitution. Rulers cannot be trusted to preserve the ideals of the state. The isolation of this new state, the prohibition of commerce and the amazing restrictions upon freedom of speech and of belief reveal the larger sense of difficulty born of experience. We are glad Plato had no second opportunity to experiment. He was a vehicle of

"divine inspiration," but not a practical manager of men. The monstrous evils of an untamed individualism could not escape his notice, but while sound in all his instincts toward life, he was not a reformer or a statesman.

The practical temper of Aristotle prepares us for a very different proposal. But while showing a strong inclination to criticise his master, not always with fairness, he is in substantial agreement with the latter's later scheme. He puts a greater emphasis than did Plato upon the individualistic side of this social organization and doubtless had a keener sense of its importance, but his conception of the state and its functions is not less socialistic than Plato's.

Dr. Pohlmann's summary and analysis of these great productions leaves little to be desired in comprehensiveness, thoroughness and fairness. The book can hardly be ignored by future students of the subject.

H. H. POWERS.

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National Life and Character: a Forecast. By CHARLES H. PEARSON. New York, Macmillan & Co., 1893. — 357 pp.

Mr. Pearson was a scholar of high attainments and a man of the world, who had seen and participated in the most important developments of British imperial policy. He was also a student who displayed in history and politics powers of observation that are usually predestined to the service of natural science. His intellectual courage, too, was perfect. Discovering traits of national character that most of us fail to see, or refuse to look at, he observed them minutely and described them calmly. Reasoning upon them with great ability, he believed that they are working themselves out in tendencies that must profoundly affect the future of the white races. He concluded that we are approaching the stationary order in society and the old age of humanity. His book is painfully depressing unless one can react vigorously against its argument. By way of preparation for it one ought to ascend Mount Ararat with Dr. Bryce, or at least climb the Matterhorn with Dr. Parkhurst.

The premises of Mr. Pearson's melancholy judgments are elaborated in an original and fascinating chapter on "The Unchangeable Limits of the Higher Races." Hitherto the white races have been progressive and buoyant because they have had unlimited room for expansion. But the temperate zone is filling up. We shall not discover

another North America or a new Australia. This certainty has not disquieted us, because we have been expecting to dispossess the dark races of Africa and Asia when the necessity should arise. This expectation, as Mr. Pearson shows, has grown out of the experience of European colonists in contact with American red men and native Australians. But these, he reminds us, were not industrial races. The Chinese, the Hindoos and the negroes, he contends, cannot be exterminated. Natal, he affirms, is bound to pass more and more into the hands of the colored race, and Africa, north of Natal, will remain negro. Central Asia will be peopled from China. Great parts of Southern and Central America cannot be peopled by the white race. If the Indians do not supersede the descendants of Spaniards, negroes or Chinamen will. All this is because climate is not the chief obstacle to further white colonization, as has been popularly supposed. Artificial modes of life that might overcome the difficulties presented by physical nature, will not really help matters, because the industrial dark races can multiply where whites cannot. It is the unequal rates of increase of white and dark in any environment to which the one race is adjusted and the other is not, that will forever confine the white races within their present limits.

Europe and North America, then, must slowly fill up. Opportunities for individual enterprise and daring will disappear. The change will affect the character of the race for vigorous originality. Mr. Pearson thinks that we see already a decline of speculative thought, and the beginnings of a decay of mechanical invention. With impaired faith in himself, the individual will trust more and more to the state. State socialism will bring with it a stationary social order, and population and wealth will cease to increase. General discouragement will impair the intellectual energy of the people. These tendencies will be exaggerated (1) by the necessity of maintaining standing armies — because, for many years, the nations of the temperate zone will try to encroach on one another, or upon uncivilized parts of the world — and (2) by the concentration of population in cities of monstrous dimensions. City life is changing for the worse. It is destructive of physical stamina, and unfavorable to the privacy and self-respect without which family life cannot grow to perfection. The family is, in fact, Mr. Pearson argues, a declining institution. It is being crushed between the state and the interests of individualism. The marriage of suitability has been displaced by the marriage of inclination. The tie between husband and wife is therefore becoming less permanent than it was, and the tie between

parents and children is weaker. The changed relations between master and servant have taken away an efficient safeguard of family feeling, and the tradition of a fixed home has been destroyed. A consequent decay of character is to be expected. Austere Puritanism, with its strength and its shortcomings, has gone forever, and is replaced by a sensuous, genial and fibreless society.

That these speculations contain a vast amount of truth cannot be denied. But it happens sometimes that the observer who sees what others overlook, is strangely oblivious to what others see. Mr. Pearson has failed to allow for changes that must take place in the dark races if they ever enter fairly into industrial competition with the whites. The moment they attempt seriously to rise to a higher standard of living their birth-rates will fall; but unless they make that attempt, they must yield before Western civilization. China, for example, which Mr. Pearson evidently regarded as a formidable menace, has amazed the world by its weakness in the face of Japanese invasion. City life and the family institution are in a transition stage. A type of the family that is ethical rather than religious or proprietary, is being evolved. Electricity will scatter much that steam has concentrated. Rural life has a future of new and great promise. It is too early to pronounce humanity senile.

F. H. GIDDINGS.

Ethics of Citizenship. By JOHN MACCUNN, M.A., Professor of Philosophy in University College, Liverpool. New York, Macmillan & Co., 1894. —viii, 223 pp.

The Sphere of the State. With Special Consideration of Certain Present Problems. By FRANK SARGENT HOFFMAN, A.M. New York and London, G. P. Putnam's Sons, 1894. -viii, 275 pp.

The Nature of the State. By DR. PAUL CARUS. Chicago, The Open Court Publishing Co., 1894. —viii, 56 pp.

Amid the prevailing deluge of crude and ill-formulated essays on social and political topics it is a real pleasure to happen upon a work like that of Professor Maccunn. His unpretentious little volume is designed "to connect some leading aspects of democratic citizenship with ethical facts and beliefs." Without any air of sounding the profoundest depths of philosophy, he presents in a simple and extremely lucid style, and with a delightfully clean-cut analysis, the

outline of a sane theory of democratic politics. With de Tocqueville, the author accepts democracy as an inevitable and an established fact, and seeks to set forth principles on which the perils that attend its sway may be avoided. The conservatism that characterizes his thought brings him into close sympathy with Burke, to whose political wisdom he renders the frankest homage through abundant references and quotations.

"Equality," in Professor Maccunn's first chapter, is deftly stripped of all the exaggerated meaning which revolutionary fervor has attached to it. "Fraternity" then is presented as a principle, depending not on half-morbid sentimentalism, but on the moral and material necessities of humanity, in which it is too firmly fixed to be overcome by the forces of individualism. The "rights of man" are criticised on Bentham's lines, as aspirations rather than actual privileges; though the author is not prepared to confine the term right too narrowly to what has been endowed with a legal sanction. It seems to me that Professor Maccunn lapses from his usual precision when (pages 53 *et seq.*) he enumerates certain "conditions of well-being" which, together with "such as these," he thinks may well be called rights before they become law. And it is especially confusing to find him declaring that the name of right "cannot be reasonably denied" to the claim to the parliamentary vote. This is surely opening the gates wide for that subjective standard which the author clearly sees to have been a cause of endless confusion. So again when he asks: "Is it false or unnatural to say that a child has a right to a careful up-bringing by parents," beyond what the law enforces? he is obviously on uncertain ground. Falsity or unnaturalness (whatever that may mean) can be affirmed or denied only after a definite meaning has been attached to "right." This word, as no one realizes more surely than the author, is continually used in two or more distinct senses. He distinguishes these senses, but fails consistently to enforce the distinction.

Professor Maccunn's plea for the rule of the majority is acute and stimulating, and abounds in happy thoughts, with obvious suggestions of modern political questions. The "tyranny of the majority," so dreaded by all conservatives, has no especial terrors for him. "That very inability to persist in a settled policy, with which its critics taunt democracy, furnishes some presumption against its pursuit of a course of consistent oppression."

It is not necessary to follow the author through his chapters on political consistency, democracy and character, &c. They all abound

in gems of thought and expression, and the reader will be forced to admit at the end that a political essayist of marked promise has appeared upon the stage.

Hoffman's *Sphere of the State* was written, the preface informs us, not for advanced students of political science, but "for the average intelligent beginner." This choice of an audience was the author's great mistake. He should have written first for advanced students; this would have forced him to think out and formulate with some precision the fundamental conceptions of his politics, and would thus have put him in a much better condition for confronting the intelligent beginner. As it is, the book exhibits much immaturity and confusion of thought. In presenting its contents to a college class as lectures, the author must have employed means of making himself understood which he has not found available in the case of the reading public.

Professor Hoffman's conception of the state seems to have been formed under the influence of that school of dreaming which is best represented in our literature by Mulford's Apocalyptic rhapsody, *The Nation*. The most abstract possible idea of social humanity is taken as a working principle for the solution of actual political problems in separate communities. In his opening chapters Professor Hoffman does indeed adopt from recent writers of a juristic bent the distinctions and qualifications which alone can make the abstract idea of the state of any consequence save as an instrument of intellectual gymnastics; but these distinctions and qualifications remain but momentarily in sight. The ultimate and conclusive reason for the author's views, whether upon education, property, the church, taxation or anything else, is that "the state is the organic brotherhood of man"; and the distinctions between abstract state, concrete state, nation, government and commonwealth, once noted, cease later to affect the author's thought or expression. Perhaps there is some reminiscence of a logical distinction in the typographical discrimination between "State" and "state"; but investigation of this point has left the reviewer in doubt as to whether the variation in the types has its source in sound philosophy or in defective proof-reading.

In his historical allusions, Professor Hoffman is not very fortunate. For example, his interpretation of Hebrew history, on which he lays particular stress, is badly marred by an apparent belief that Abraham and Isaac post-dated the monarchy, and that Jesse was one of the kings (page 20). On the practical questions as to corpo-

rations, taxation, education, *etc.*, there is much in the book that is unquestionably sound. That the author's *Politik* varies from the sensible at times, is in most cases due to the disturbing influence of his *Staatslehre*, which is so unnecessarily dragged in at every turn. Among the passages to which the author should direct particular attention in his second edition is that on pages 32-34 where he points out

the difference between a law and a statute — a very important difference, but one too often overlooked. A law is a requirement of the State, while a statute is a decree of the government. The former can never be wrong. The latter is not often unmixed with error. . . . A man ought never to disobey a law, but he may often be called upon to disobey a statute. . . . A judge is not appointed to interpret and administer the laws, but to interpret and administer the statutes.

There are novelties of thought and nomenclature in this passage that, if properly expanded, might well revolutionize the sciences of jurisprudence, ethics and constitutional law.

Dr. Paul Carus thinks that the Chicago Anarchists should have been prosecuted not for murder and conspiracy to murder, but for treason: and he believes that Chief Justice Paxson of Pennsylvania was to be commended for bringing this latter charge against the Homestead strikers. The little essay on *The Nature of the State* is designed to set forth the philosophic grounds for the author's judgment.

The first half of the work embodies a very clear exposition of the concept of the state, as a real entity. Extreme individualism is effectively combatted in favor of "societism" — a term which, if not as old, is probably as justifiable, as the purist's *bête noir*, sociology. The latter half of the essay, where the author treats of the right of revolution, is pretty hard reading. It gives evidence of a serious difficulty in the author's mind — a difficulty that confronts every philosopher who, with a high appreciation of the reality and importance of the state, cannot, after all, bring himself to admit that the state is the ultimate interpreter of duty to the individual. Dr. Carus talks of the *jus naturale* and the "inalienable rights of citizens," and declares that the state has "no right" to pass such and such laws. But while committing himself thus to the anarchist's premises, he very carefully refrains from drawing the logical conclusions; and instead of the out-and-out duty of the individual to resist by every means encroachments on his inalienable rights and to disregard

laws that the state has "no right" to pass, we have such moderate doctrines as this:

Upon him who is convinced that the laws are immoral, the duty devolves to use all legal means in his power to have them repealed.

But why merely "legal" means, when the whole question is in the realm of the *jus naturale*, far above the sphere of mere legislation?

Again:

All positive law is valid only in so far as it agrees with the natural law; when it deviates from that, it becomes an injustice and is doomed.

The anarchist, who admittedly is as well acquainted with the content of the *jus naturale* as any other man, concurs exactly in this sentiment; but instead of meekly sitting down and nursing a sentiment that the invalid enactment is doomed, he constitutes himself an active agent in the execution of the doom.

Resistance is right when the state-authority comes into conflict with moral laws. . . . With all this unreserved appreciation of the revolutionary principle, we are by no means inclined to say that it is our duty to resist any and every immoral law.

In other words, it is not always our duty to do right. Your anarchist will very emphatically announce that his conception of duty is much more rigorous than this, and that he will act upon it, *ruant urbs populusque*.

It is but just to say that these quotations do not contain what seems to be the essence of Dr. Carus's doctrine. He appears really to have the idea that subjective convictions on moral questions are to be subordinated to the principles embodied in the legislative expression of the state's will, and that when these principles cease to harmonize with the general sentiment of the community, a readjustment must be affected, but only through the regular action of the state's organs. Such an idea, however, is entirely lost sight of in the citations I have made, and indeed can never be logically reconciled with the notions of natural law and natural rights which the author seems so loth to abandon. The clear development of this conception requires, moreover, a radical distinction between state and government, and above all, such discrimination in the various senses of "right" and "duty" as shall rescue the thinker from the inevitable consequences of a confusion.

WM. A. DUNNING.

History of the Philosophy of History. By ROBERT FLINT.
Vol. I: Historical Philosophy in France and French Belgium and
Switzerland. New York, Charles Scribner's Sons, 1894. — 706 pp.

The learned author of this work is attempting to do for the philosophy or science of history substantially what Janet has done for political philosophy. His plan includes two more volumes, one devoted to the historical philosophy of Germany, and another to that of Italy and England. If completed on the scale of the present volume, they will contain a detailed and systematic account of "the course of human thought in its endeavors to explain human history"; in other words, "of the rise and progress of reflection and speculation on the development of humanity." The aim of the work, as the author further states, is both historical and critical. That is, he not only attempts to outline the theories as they have appeared, observing both their historical and logical sequence, but he subjects them to criticism in order to ascertain their merits and defects, their relative truth or falsity. This method of treatment is here applied for the first time, and on a large scale, to the field of history.

In an introduction of nearly two hundred pages Professor Flint clears the way for the special and systematic portion of the work. He unfolds in this his view of the nature of history, of the application of the terms science and philosophy to the subject, of the distinction between history and historiography. The broadest possible view of the subject is obtained by adopting the distinction between nature and history which Droysen has made familiar. Not only the possibility, but the existence, of a science of history is affirmed, and Guizot is assigned the foremost place among its founders. Still, the nearest approximation which the author makes to a definition of this science is substantially that it is the application of the scientific method to the subject-matter of history, ending in the discovery of certain laws of human development. Closely related to it is the philosophy of history, which traces the relations in which it stands to other departments of knowledge. These together form the subject-matter of this work.

Preparatory to his entrance upon the study, Professor Flint outlines the development of the three fundamental ideas without which a philosophy of history is impossible, *viz.*, progress, freedom and humanity, or the unity of the race as to its essential nature. He shows that previous to the close of the middle ages these ideas were but dimly apprehended, and that by only a few teachers. In France

in the sixteenth century Bodin saw that the fact of progress underlay human history, but he was chiefly concerned with law and political science. Bossuet is, of course, the representative historian of the seventeenth century, but his thought moved wholly within the lines of the orthodox religious views of the age. The eighteenth century learned to study man as man, and grasped the idea of progress more clearly than any previous age. Economic science was also developed. These were conditions essential to the scientific treatment of the subject, and something like a philosophy of history begins to appear. The two great services rendered by Montesquieu were these, that he brought history and economics into alliance for the explanation of social phenomena, and that he so clearly taught the doctrine of historical relativism as to win educated Europe over to its acceptance. But among the men of this period who contributed to the wealth of historical ideas, Professor Flint is inclined to give the first place to Turgot, and this because of the profound view of social progress as the basis of history which he gave in his discourses at the Sorbonne. Unlike many of his contemporaries, he was able to do justice to the past, while with them he believed in the perfectibility of the race. "If the philosophy of history," says the author, "be merely a scientific representation of universal history as a process of progressive development, Turgot has probably a better claim than any one else to be called its founder." Condorcet, who lived under the full influence of the revolution, carried the ideas of progress and humanity to their utmost development, and with him the work of the eighteenth century in this domain of thought closed. It is evident that the efforts made to develop a philosophy of history had up to that time been very few and imperfect.

The revolution greatly strengthened the hold which the ideas of progress, liberty and humanity had over the minds of men. In connection with the growth of natural science the theory of evolution was perfected. These facts were favorable to speculation about human development, and by two of the French thinkers of the present century, Cousin and Comte, notable attempts have been made to construct a philosophy of history. The former, using suggestions derived from Hegel, and making psychology his starting point, regarded history as the expression of the progress of human thought according to a preconceived order. The latter, like the socialists with whom he was closely connected, worked under the strong influence of natural science. The result was the view that history is a department of social physics, though with a method largely its own.

The conception of law pervading it is brought over from the natural sciences. The idea of progress is analyzed at length, but its stages are fixed according to the famous formula which Comte borrowed from St. Simon. Imperfect knowledge of history made the generalizations of Comte, as well as those of Cousin, misleading and unsatisfactory.

It is not strange, then, that in these later years a critical school has arisen, whose members have rejected *a priori* reasoning concerning history, and have based their conclusions on the most thorough study of the facts. Cournot and Renouvier are the leading representatives of this tendency in France, and only by the labors of such as they, extended over a long period of time, can the foundation be laid on which something like a satisfactory philosophy of history can be built. That, at least, is the impression which the reviewer has drawn from Professor Flint's book. It is a work abounding in thorough and suggestive criticism of historians as well as philosophers, a monument of learning and research. To the ordinary reader its account of the development of historiography is likely to prove its most valuable feature.

H. L. OSGOOD.

Cases and Opinions on International Law. With notes and a Syllabus. By FREEMAN SNOW, Ph.D. Boston, The Boston Book Co., 1893. — 586 pp.

Treaties and Topics in American Diplomacy. By FREEMAN SNOW, Ph.D. Boston, The Boston Book Co., 1894. — 515 pp.

These two volumes constitute an interesting and valuable addition to the works specially designed for the use of persons pursuing the study of international law and diplomacy. We have had various students' editions of treatises on those subjects, and we have had manuals specially prepared for the use of students; but the two volumes now before us embody the first attempt to furnish the student, in convenient form, with documentary material to work upon.

While I take pleasure in expressing an unhesitatingly favorable opinion of the usefulness of these volumes, I must admit that when, after reading the preface to the *Cases on International Law*, I first examined what followed, I felt a sense of disappointment. In the preface the author states that the object of the compilation is to

employ, in the teaching of international law, the "case system" introduced into the Harvard Law School a score of years ago by Professor Langdell.

With this view [says the author] it has been the almost invariable rule to give the decisions of the courts in the exact language of the judges, though necessarily leaving out, in some cases, the less pertinent parts. In this respect this volume differs radically from Mr. Pitt Cobbett's excellent work on the same subject.

Mr. Pitt Cobbett follows the plan of summarizing cases in his own language, with a view to bring out the points decided by them. In the work of Dr. Snow, there are upwards of two hundred "cases and opinions." Of these, about a hundred and twenty-five consist of extracts from law cases, and the rest of extracts from text-writers or of summaries of cases judicially or diplomatically treated. It is true that many of the extracts from text-writers, as well as many of the summaries, relate to cases, either diplomatic or judicial; but to give some text-writer's statement of a case, or one's own summary of it, does not constitute a radical departure from Mr. Cobbett's plan. Nor can it be maintained that to give enough of the opinion of a judge to disclose the point decided by him, is an application of the inductive method of teaching, as illustrated by the "case system." A judge's statement of a principle may be good or bad, according to his ability. The principle may be better stated by some text-writer. It is in the study of the whole case, and the deduction of what was decided from the facts and the opinion, that the student acquires the faculty and the habit of legal ratiocination.

Apart, however, from this phase of the matter, there is an undoubted advantage in the use of concrete illustrations of principles, which is, I think, generally recognized; and this advantage is secured whatever may be the form in which the illustration is given. For this reason alone I should consider the present collection of cases and opinions a valuable publication. But I desire to express my special appreciation of the "syllabus," in which the author has given an admirable list of references to treatises as well as to judicial reports. In this relation Dr. Snow pertinently observes:

It is indeed the justly celebrated authors of treatises on international law who have analyzed and systematized the subject, and who have reduced it to a science. A collection of cases and opinions, moreover, must necessarily leave many gaps, to be filled by means of text books or lectures. And it is the purpose of the syllabus — a leading feature of this book —

to make available the opinions of a number of the most eminent writers, of different countries, by grouping references to their works under specific heads.

In the *Treaties and Topics in American Diplomacy* we have a collection of our more important treaties and conventions, given textually or summarized, together with notes upon them, and systematic discussions of leading topics, such as the Monroe Doctrine, the Fisheries Question and the Behring Sea controversy. In these discussions the author has exhibited not only careful and thorough study of his subjects, but candor and impartiality in his treatment of them. His aim has been not to advocate theories and establish conclusions, so much as to present full and frank statements for the student's enlightenment.

J. B. MOORE.

Municipal Government in Great Britain. By ALBERT SHAW.
New York, The Century Co., 1895. — viii, 385 pp. .

The Englishman at Home : His Responsibilities and Privileges.
By EDWARD PORRITT. New York, Thomas Y. Crowell & Co.,
1893. — xiv, 379 pp.

Mr. Shaw's magazine articles in the field of municipal government in Great Britain have attracted so much attention that his book will be welcomed by all who are interested in municipal problems. This book, however, is much more than a mere collection of fugitive essays. It contains much work which has not been previously published, and those chapters which have drawn considerably upon Mr. Shaw's former publications have been rewritten. The volume, therefore, gives a good description of municipal government in Great Britain at the present time.

In the introductory chapter on the growth and problems of modern cities, attention is called to the fact that the rapid development of municipal life is not by any means peculiar to this country, as we are often apt to suppose. The same movement is shown to be characteristic of Europe, and particularly of England. The massing of population in large cities is a sociological fact whose existence cannot be denied, and the tendency at the present time is towards municipal rather than rural life. Mr. Shaw's book is not intended, however, as anything more than a description of municipal conditions in Great Britain. He disclaims in his preface the intention to derive any particular lesson other than that of a warning for those in charge

of American cities. Expressly repudiating any desire to impose the English organization on the American cities, he recognizes that "we must deal with our own problems in our own way." At the same time, notwithstanding this disclaimer, nothing is plainer than that Mr. Shaw has become thoroughly convinced that the English method of municipal government is the ideal method.

The great success which has attended the remarkable development in English municipal life during this century is a sufficient evidence, indeed, that the English municipal organization of the present time is a good one for English conditions. But the most characteristic feature of this organization, which Mr. Shaw particularly approves, namely, the concentration of all powers in a town council, is one which we have tried in this country, and which we have been obliged to discard. Nothing is plainer in our development than the growth of the powers of the mayor, and though the result may be, as Mr. Shaw remarks, "a periodically elective dictatorship," it will require more than the success of the English in working the town-council plan to cause us in America to return to it.

The development of the office of mayor in this country has been based upon a supposed analogy between city government and state government, in respect to the separation of executive and legislative power. Mr. Shaw is quite right in denying that there is any such analogy. The work of municipal bodies is altogether administrative, and the adoption of the mayor system is undoubtedly the adoption of a monarchical principle. In discussing this matter, however, it is necessary to bear in mind not only that there is no fair analogy between city and state government, but also that the former, under the system which has been in vogue in the United States, and in accordance with which the legislature has been permitted to interfere continually in the affairs of cities, was in fact a government by a council. The council was not, however, a local one, and it therefore felt no responsibility to the people whom it governed. It was responsible only to the people of the state at large. To the fact of continual legislative interference, it would seem that Mr. Shaw, in the slight comparison which he makes of English with American conditions, has not given sufficient attention. Further, he regards as unsound the English principle in accordance with which matters of a central character have been so generally attended to by special organs provided for the purpose, apart from the municipal organizations. The separation of the general functions of government over which the legislature or some central authority must exercise a control, from the

purely local business in which the municipal corporations should have a pretty free hand, does not seem to receive from Mr. Shaw adequate recognition as a means of attaining good municipal government. This differentiation of functions has been of enormous influence in England in taking away from the legislature the temptation to interfere in matters which are purely local. In this country we have adopted the plan which Mr. Shaw advocates, of putting in the hands of the larger municipal corporations the care of a long series of matters which are not local but general in character. Over these matters the legislature, which is the only organ charged with the general interests of the state, must exercise an important control. Becoming accustomed to the exercise of a control over municipal corporations so far as they are acting as agents of the state government, the legislature has failed to observe the distinction which has been made in England, and has extended its control over local matters also. Perhaps the demand which Mr. Shaw makes for the assumption by the municipal corporations of more functions of central administration, such as the care of the poor and the schools, would, if allowed, place the English municipality ultimately in the same position toward the legislature as that of the American municipality at the present time.

In connection with this matter of central control Mr. Shaw fails to notice another point of extreme importance, namely, the method which has been provided in England for the enactment of special laws. Such legislation is hedged about by so many formalities, must conform in so many particulars to general statutes, and in so many cases requires for its validity the approval of some central administrative authority, that its dangers have been very largely avoided.

But apart from this comparison of English with American conditions, and apart from this desire which is evident, although it is expressly disclaimed in the preface, to apply the English system to American conditions, Mr. Shaw's book is deserving of great praise. The chapters on the work of the various cities are extremely interesting, and show an intimate acquaintance, not merely with the municipal machinery, but also with the way in which it works and with the actual conditions of English municipal life. In general the description of the organization of the English city in Chapter III is accurate. I notice, however, contradictory statements with regard to the borough auditors; on page 32 it is said that the two elective auditors are chosen by the council, while on page 65 they are said to be chosen by the burgesses. The latter statement is correct. It is to be noticed, finally, that the work is accompanied by an excellent index,

and that the several appendices contain some very valuable material, among which the abbreviated report of the late commission appointed for the unification of London is of peculiar interest in connection with the proposed consolidation of the towns which will probably form the "Greater New York."

What Mr. Shaw has done for English municipal government, Mr. Porritt has done for English social and governmental institutions in general. This work is not confined to purely governmental matters. It gives a very good description of the central and the local organization, but it contains as well chapters on the Church of England, the labor legislation of the present century, the land and its owners and the daily press. In a series of appendices is contained also a great deal of valuable information, mainly of a statistical character, such as the aggregate cost of local government in England, municipal indebtedness, salaries under the municipalities, the aggregate annual cost of the poor-law system, the distribution of pauperism, the curriculum of the elementary day schools, *etc.*, *etc.* In the first chapter Mr. Porritt calls attention to the interesting fact that the Reform Bill of 1832 resulted in the reform measures connected with municipal government, but that the Reform Bill of 1884, which extended the franchise to many of the rural laborers, resulted at once in a reform of the county organizations, and in the quickening of rural administrative life.

The work seems to have been, as a general thing, accurately done, though attention must be called to the fact that the new Local Government Act of 1894, which went into effect last November, has changed in many particulars the system of administration as described by Mr. Porritt. On page 25 it is said that the members of the rural sanitary commissions are elected from the members of the local boards of guardians. This is not quite accurate, since, under the old system, the rural guardians were to act as the rural sanitary authority. In case the district consisted of urban and rural districts, the guardians from the urban districts did not act in sanitary matters at all. But this is a matter of very slight importance at the present time, inasmuch as since the Act of 1894, the members of the rural district councils are to act as guardians in the rural districts.

Of course it cannot be expected that a book of the size of *The Englishman at Home*, and covering as much ground as it does, should go into much detail. At the same time, Mr. Porritt has had the good fortune to be able to seize the most salient points in the English administrative system. Indeed, his work is, on this account, more

valuable in some respects than that of Mr. Shaw. He points out the system adopted for the passage of private and local bills, and lays greater emphasis upon the administrative control over the various local corporations, which has grown out of the administrative legislation of the present century. As this is one of the most important changes which has been introduced into the English system, and as it has completely modified the old system of local self-government, no consideration of English institutions as they exist at the present time is complete, or even adequate, without an explanation of its effect upon the English system of administration.

A fault common to both of these books is that they are unaccompanied by references of any sort. This fact makes it extremely difficult to control the statements of the authors. F. J. GOODNOW.

Europe, 1789-1815. By H. MORSE STEPHENS. London, Rivington, Percival & Co.; New York, Macmillan & Co., 1893.—423 pp.

The Revolutionary and Napoleonic Era, 1789-1815. By J. H. ROSE. Cambridge, University Press; New York, Macmillan & Co., 1894.—388 pp.

The period covered by these two books has not been neglected by historians. The dramatic intensity of its various phases, the picturesqueness of its leading characters, and its place as the connecting link between the old and the new conception of government, necessarily cause it to be a favorite period for research. Yet in nearly all the histories covering different portions of this period, some of them works of the highest merit, two grave defects may be found. The first is the failure properly to emphasize the fact that between the Napoleonic era and the Revolutionary era there are no hard and fast lines to be drawn, and that the two periods must be studied as one and the same product of the political, intellectual and religious upheaval of the eighteenth century. The second is the undue concentration of the attention upon France, neglecting sufficient consideration of the internal condition and history of the other European countries. This is naturally most noticeable in the histories of the Revolutionary Epoch; Napoleon's career necessarily draws the attention of the writer more to Europe at large. It is gratifying to note the appearance of the two volumes before us, each of which purports to avoid the common faults and to give us in con-

venient size a *résumé* of the historical development of Europe from 1789 to 1815.

Mr. Stephens's volume constitutes period seven in the Oxford "Periods of European History," edited by Arthur Hassall, M.A. A scholarly work would be expected from Mr. Stephens, whose extended researches into French Revolutionary history have made him one of the most thoroughly equipped workers in this field. Nor is one disappointed after reading the book. To a great extent the author has succeeded in preserving the judicial attitude, and in casting aside English prejudices in his estimates of the leading characters. The temptation to neglect the history of Europe while describing the more vivid features of the upheaval in France is successfully resisted. He has skillfully woven together the stories of even the minor European powers, and has enabled the most cursory student to get such a grasp of the whole subject as is utterly unobtainable from many more extended works.

On the other hand Mr. Stephens has not neglected to emphasize the fact that France is the central figure, and that the other countries group themselves around her. He summarizes the intellectual revolution, the reaction against the church, the social inequalities and the foreign influences, but he does not find in these the true foundations of the revolution. "The causes of the movement," he claims, "were chiefly economical and political, not philosophical and social : its rapid development was due to historical circumstances, and mainly to the attitude of the rest of Europe."

If he had had more space, he might have made more clear his reasons for slighting the social phase of the movement, which so vitally affected economical and political conditions, and rendered France a fertile field in which to sow the philosophical abstractions of Rousseau. He correctly describes the condition of the peasantry in France as far better than that in certain other European countries ; yet, in his eagerness to correct a popular misconception, he fails adequately to indicate the real misery of the French peasant. This may sometimes give the reader a false impression of the conditions under the *Ancien Régime*.

In a work of this nature it would be impossible to expect more than the merest outline of the events of the French Revolution. Considering the space at the author's command, a remarkably complete account is given. The ever-present necessity of condensation occasionally results unfortunately. The bald statement that Robespierre "was a profoundly religious and virtuous man," and

that "the chief cause of his hatred of Hébert and Danton was his belief that they were immoral atheists," is one that must be questioned. A fuller analysis of Robespierre's character would doubtless have modified the statement. The conventional painting of Robespierre is in too black colors, but his selfishness and ambition cannot so easily be overlooked.

In his treatment of Napoleon the author is especially just. We may reasonably expect a far different conception of the great conqueror in the histories now appearing from that to be found in earlier works. Napoleon's character was utterly incomprehensible to his contemporaries, and their erroneous judgments have been adopted by the majority of writers. The result has been either excessively eulogistic or uncharitably denunciatory. Mr. Stephens has profited by the painstaking study of the present generation, and shows us Napoleon as a really great reformer, the creature of the revolutionary spirit, yet necessarily hampered by conditions that were due to the sudden overthrow of long-established institutions.

Mr. Rose's work is published in the Cambridge Historical Series, which is somewhat different in its scope from the Oxford series. The latter endeavors to give a general survey of Europe in successive periods; the former sketches the history of modern Europe, but deals with the different countries in separate volumes. However, when an epoch such as this under consideration is reached, the Cambridge writers abandon their own in favor of the Oxford plan.

In many respects Mr. Rose should be as highly commended as Mr. Stephens. He has labored conscientiously to present French history in its proper relation to the history of the other European countries. If we were to judge the books strictly according to the historical importance of the subject-matter, we should be compelled to say that the sense of historical proportion is better preserved in this book than in that of Mr. Stephens. But as the chief need for more general studies in this period is to throw a better light on European affairs, the Cambridge work suffers in the comparison. Mr. Rose could have spared some of the detail in his chapters on French affairs and expanded his discussions on the larger European problems. Yet some of his work in the latter field is admirable. For instance his first chapter, on the political and social weakness of Europe, while not so original as some portions of Mr. Stephens's discussion, is an excellent portrayal of the conditions confronting Europe in the last decade of the century. The spirit of Mr. Rose's work is commendable. He has tried to free himself from

insular prejudices and to write in the attitude of dispassionate criticism. In the main he has succeeded.

The incidents of the French Revolution are so theatrical that it has seemed difficult for the most sober historians to abstain from coloring their pictures, and from throwing a far too lurid light upon events which, separated from their connection with the movement at large, are really of minor importance. Mr. Rose's work is quite free from this defect, as is particularly to be seen in his account of the storming of the Bastille.

His treatment of the Napoleonic Era is praiseworthy so far as the narrative is concerned, but his conception of the character of Napoleon is not so satisfactory. He assumes throughout almost a hostile attitude toward the great French leader. His praise is grudgingly bestowed, and his criticisms of Napoleon's plans and actions are at times unreasonably harsh. One is constantly reminded while reading this portion of the book, that the writer is an Englishman, with an Englishman's inherited prejudices.

Taken as a whole, however, Mr. Rose's work may well rank with that of Mr. Stephens. The two books are substantial additions to the library of the general student of history.

C. E. CHADSEY.

DURANGO, COLORADO.

Selections from the Correspondence of Thomas Barclay, formerly British Consul-General at New York. Edited by GEORGE LOCKHART RIVES, M.A., late Assistant Secretary of State of the United States. New York, Harper & Brothers, 1894. — 429 pp.

This volume exhibits an advance in thought, if not in time, beyond the managers of a certain historical society, who, in printing the diary of a Revolutionary character, carefully omitted the passages in which a member of a well-known family was spoken of as a Tory. Thomas Barclay "was an active and zealous loyalist." He was born in the city of New York in 1753; he died there in 1830. He died, as he was born, a British subject. He spent nearly fifty years in the service of the British government; yet his residence and associations were chiefly American, and his principal public services related to American affairs.

About six months after the battle of Lexington Thomas Barclay was married and took up his residence in Ulster County, where his wife's maternal grandfather, Cadwallader Colden, owned large tracts of land. His father, Henry Barclay, as rector of Trinity Church, represented

that bulwark of the monarchy, the English Church; and although he died when his son Thomas was scarcely eleven years of age, it is doubtless true, as the editor surmises, that the boy was taught to believe "the Church of England the embodiment of all spiritual truth, the young king the ablest and best of rulers, and the system of government administered by Cadwallader Colden the perfection of human reason." Thomas Barclay's loyalist attachments led to his being driven from his home in Ulster; but instead of going to England and becoming a "drone," he joined the royal army, in which he served with great credit. At the close of the war, however, he found himself proscribed and his property confiscated; and he sought refuge in Nova Scotia, where he soon became a member of the provincial assembly and afterwards its speaker. In 1793 he was appointed lieutenant-colonel of the Royal Nova Scotia Regiment.

In 1796 Colonel Barclay was commissioned by the king as British commissioner or arbitrator, under article five of the Jay Treaty, to determine what river was intended under the name of the St. Croix, in the treaty of peace of 1783. This was the first of the transactions, beginning with the treaty of 1794 and ending with the treaty of 1871, by which the northern boundary of the United States has been determined. Americans claimed an eastern river, named the Magaguadavic, as that intended by the name St. Croix; the British claimed a western river, named the Schoodic or Schodiac. The latter was accepted as the river truly intended, but a compromise was made as to the waters that constituted its source. In this transaction Thomas Barclay bore a leading part, as is shown by his correspondence. Having examined the fragmentary papers on the subject in the Department of State, I am glad to find in this correspondence a clear and connected account of how the compromise was reached.

In January, 1799, Colonel Barclay was appointed to succeed Sir John Temple, deceased, as British consul-general for the Eastern States of America. He now returned to New York; and on his arrival he encountered a question — that of the desertion of seamen — which has only lately been made the subject of a conventional arrangement between the United States and Great Britain. To meet the difficulties occasioned by the numerous desertions at the port of New York, the legislature of the state passed an act to authorize the arrest of deserters. The act, however, was thrown out by the Council of Revision, on the ground that it was a commercial regulation, which pertained to the Federal Congress.

As the days passed by, the events leading up to the war of 1812 began to develop. Complaints of impressment became frequent. British vessels hovered on the American coast, and in some instances boarded American vessels within the marine league. For a time the port of New York was virtually blockaded. In April, 1806, the British man-of-war *Leander*, while firing at an American coaster, killed the man at the helm. In the same month the first non-importation act was passed. Soon afterward French decrees and British orders-in-council began to vex neutral commerce. In June, 1807, occurred the attack of the *Leopard* on the *Chesapeake*. At the end of the same year came the embargo. Then followed the non-intercourse acts, and in time the war. These topics are all embraced in the correspondence before us.

At the outbreak of the war Colonel Barclay, his official functions being in suspense, went to England; but he was immediately appointed as British agent for prisoners of war in the United States. In this capacity he returned in April, 1813, to New York. In the following month he concluded with a representative of the United States at Washington, an arrangement in relation to the exchange of prisoners.

After the war Colonel Barclay returned to the post of consul-general at New York. His activities, however, were soon diverted into another channel. For the most part the boundaries between the United States and Great Britain remained to be marked or determined, and he was appointed as British commissioner under articles four and five of the Treaty of Ghent, to decide upon the title to Grand Menan and the islands of Passamaquoddy Bay, and to determine the boundary from the source of the St. Croix to the St. Lawrence. A formal award under article four was executed at New York, in November, 1817. But as to the boundary referred to in article five, from the source of the St. Croix to the St. Lawrence, the commissioners were unable to agree. Nor was this question settled till 1842, when Mr. Webster and Lord Ashburton made their famous treaty and adjusted it by a compromise.

The editorial work in this volume exhibits care that may fairly be called minute. Even the more obscure personal allusions in the letters are traced out and identified. But it is in the introductory observations, written in a clear, strong style, and forming a setting to each chapter of the correspondence, that the editor is especially happy.

J. B. MOORE.

BOOK NOTES.

THE object of the pamphlet entitled *British Aggressions in Venezuela: the Monroe Doctrine on Trial*, by William L. Scruggs, juriconsult for the government of Venezuela, is to set forth the case of Venezuela against Great Britain in the Guiana boundary dispute. This dispute is of long standing, but it is claimed by Venezuela that the British have recently made encroachments even on territory that was formerly admitted to be Venezuelan. These encroachments have as their object not merely the acquisition of territory, but the acquisition of the right to navigate the Orinoco. The British claims now extend to territory bordering on the mouth of that river, and, if they should be established, the right of navigation would follow. How far the Monroe Doctrine may be involved in this matter, is a question that depends upon the view one may take of the meaning and extent of that declaration, as well as upon the merits of the present dispute. Mr. Scruggs sets forth the case of Venezuela clearly and forcibly; and a presumption is raised against the extreme claims of Great Britain by the fact that she has avoided or declined arbitration, except upon conditions that would exclude from the reference a great part of the contested territory.

Albert, Scott & Co., of Chicago, have put students and teachers of our constitution under obligation by publishing in a single volume Madison's *Journal of the Federal Convention* (1893). In this form the invaluable history of the convention is much more available than heretofore for class-room work. The same firm have also put forth, in uniform style, a volume containing *The Federalist, and Other Constitutional Papers*, edited by E. H. Scott (1894). The "other papers" consist of a selection from Mr. Paul Leicester Ford's well-known collection of "essays published during the discussion of the constitution by the people." The Chicago firm's two volumes together constitute an admirably compact yet comprehensive basis for the study of our constitution's early history.

Professor Simeon E. Baldwin, in *The Three Constitutions of Connecticut* (reprinted from New Haven Historical Society Papers) traces the creation by ordinary legislation of provisions supplement-

ing or affecting the fundamental instrument of government, and the development, thus, in Connecticut, of a constitution consisting substantially of both charter and statute. The writer then in a subsequent paper treats of the constitutional discussion and growth since the abandonment of the colonial charter, helpfully supplementing his work by a table of all amendments proposed since 1818, with the action upon each.

Two essays on local matters in Rhode Island are a result of graduate study at Brown University. In *The Development of the Nominating Convention in Rhode Island* Mr. Neil Andrews gives a clear and concise sketch of the transition in the four decades following 1790, from the practice of self-nomination, through the system of nomination by a caucus composed of legislators and of delegates from towns represented in the House by the opposite party, to the beginning of the later nominating convention. Mr. Charles Stickney's sketch of *Know-Nothingism in Rhode Island* merely adds a portion to the general history of the "Native American" movement, and a portion apparently not of marked importance. With each of these essays bibliographical suggestions would have been proper, and would have increased the value of the work.

Among the papers recently issued from the Historical Seminary of Brown University and published by the Rhode Island Historical Society, is one by Mary E. Woolley on the *History of the Colonial Post Office*. It gives a brief sketch of the attempts to establish post-offices in the colonies previous to the act of Parliament of 1710, under which an inter-colonial postal system was organized. The patent granted to Thomas Neale in 1692, to receive and deliver letters and packets within the colonies, is also printed here in full.

In an essay on *The Southern States* (Putnam's, 1894) J. L. M. Curry attempts "the restoration of the South to its true place in the story of the formation and the history of our government." The work is simply a sketch of our constitutional history on the lines of *ante-bellum* state-rights doctrine, and so is an apology for the secession of 1861. There is nothing new or striking in the narrative or the arguments, but the author is as free from bitterness as from originality, and this in itself may be a sufficient justification for printing. His essay is commendable, also, in emphasizing the idea that former state-sovereignty theorists are logically able, since the war, to adopt the nationalists' view of our government; for the author sees that the *post-bellum* constitution is an essentially different one from that of *ante-bellum* days.

Charles H. Otken's *Ills of the South* (Putnam's, 1894) is a serious attempt to analyze the causes which seem to be obstructing the prosperity of the author's section. The credit system and the lien laws, which play so large a part in the agriculture of the South, are set forth as especial sources of ill, though the author does not gloss over the shiftlessness of the farmers that is at the bottom of the matter. The inefficiency of the negroes as a laboring class, and the general social demoralization of which the race is a cause, are treated at length. The work, while of very unequal value on different points, is on the whole useful and suggestive.

In the first two volumes of General Viscount Wolseley's *Life of the Duke of Marlborough* (Longmans, Green & Co., New York, 1894) the career of the duke to the accession of Queen Anne is treated in detail. The work, as was to be expected, is preëminently a military history, though in the part before us political events occupy an important place. It contains a systematic defense of Marlborough's character, bringing his staunch Protestantism into bold relief. This is made use of to explain his treasonable desertion of James II. The biographer claims that Marlborough considered this course necessary to the preservation of the liberties of England, having warned James that he would abandon him if the king attacked the laws and the church. The moderate view taken of the duke's conduct toward William III is similar to that held by Ranke. These volumes form a substantial contribution to historical literature bearing on the period of the English Revolution.

In the new edition of *Essays Introductory to the study of the English Constitution*, edited by Messrs. Wakeman and Hassall (Longmans, Green & Co.), only few alterations have been made. The chief one is the revision of Mr. Henson's essay on "The Early English Constitution." The *Essays* are a product of collaboration by six English historians who have done active work in the propagation of historical knowledge. Professor Ashley, who writes on "Feudalism," has published his two volumes on "English Economic History." One of the editors, Arthur Hassall, who writes on the "Constitutional Kingship 1399-1485," is the editor of the series entitled "Periods of European History," for which he is to write a volume on Europe from 1715-1789. Mr. Oman and Mr. Wakeman have already written for that series, the one on Europe, 476-918, the other on the period from 1598-1715. Mr. Medley, who writes on "Parliament," has just published a manual of English constitutional history. These historians aim in the *Essays* to arrange the well-

ascertained facts connected with the growth of England's institutions in such a way as may make the study of them more intelligible and more attractive to beginners. As the work is intended for beginners, the authors have slurred over many difficult points in order to make the development clear and simple. This sacrifice of absolute truth to perspicuity is reprehensible, but may be pardoned in view of the purpose of the volume. Bishop Stubbs's work has been used as a foundation. That the *Essays* have been successful in their object, the fact of a second edition is a concrete and ample proof.

Frances Gardiner Davenport, A.B., of Radcliffe College, has prepared a most useful *Classified List of Printed Original Materials for English Manorial and Agrarian History during the Middle Ages* (Ginn & Co.). The list begins with documents of the twelfth century, account rolls, court rolls, extents, rentals and customaries, subsidy rolls, text-books of manorial law and a topographical index. A general bibliography of the subject of English agrarian history during the middle ages is also given. Completeness is not claimed for the lists.

In a previous number of this QUARTERLY the first two volumes of *Les Archives de l'Histoire de France*, by Langlois and Stein, were reviewed. The third and concluding volume has now been published (Paris, Alphonse Picard). It is devoted to the material for French history which is deposited in the archives and libraries of foreign countries and in the libraries of France. Much general information concerning the archives of Europe is contained in it which will be found valuable by other than French investigators.

The Paris firm of Léon Chailley has finally decided to imitate the successful English Citizen Series. Under the editorship of MM. Benoist and Liesse a number of convenient little manuals, bearing the general title *La Vie Nationale*, have been planned and partly completed. M. Benoist himself has already published the initial volume, *La Politique*, and M. Gustave François has started the economic series by his book on *Le Commerce*. The works are not, as might be imagined from the title, of interest exclusively to Frenchmen. An attempt is made to give the facts, past and present, of other countries as well. Among the forthcoming volumes are those on the social question, banking, finance, agriculture, public works and a large number of administrative and political topics.

To the list of sumptuous volumes on the separate Livery Companies of London must now be added the *Records of the Hole Craft and Fellowship of Masons, with a Chronicle of the History of the Wor-*

shipful Company of Masons of the City of London, by Edward Conder, Jr. (Swan Sonnenschein and Macmillan, 1894). The records of the Masons' Company are unfortunately extant only from the year 1619, those for the earlier years having been lost or destroyed by fire. For the preceding period Mr. Conder, himself the master of the company, has sought to compile the history from rather well-known sources. This occupies about one-third of the volume, and does not increase our information materially. The author wavers in his interpretation of the term free-mason. In one place he tells us that a free mason meant nothing more than a mason free of his guild or company, that is, a master mason. In another place he maintains that it signified a free stone mason, as distinguished from a mason who was employed in rough work. We are reminded of the importance of the masons in the cathedral building of the middle ages, of their curious secret history and of their international applications. The main body of the work consists of extracts and transcripts from the original records, and in so far supplements Herbert's well-known history. The book is fully illustrated and beautifully printed.

Of some interest to the economist is *A Catalogue of the Library of Adam Smith*, edited, with an introduction, by James Bonar (Macmillan, 1894). The introduction contains, among other things, a short history of Smith's library and of its dispersion, a copy of his will and an essay by John M. Gray on the various portraits of the master. The catalogue is supposed to contain about two-thirds of the original library, which numbered some 3000 volumes. It is noteworthy that only about one-fifth of the titles are devoted to history and economics. Mr. Bonar has performed his part of the work well, and has appended to each title a reference, with explanatory statement, to the passage or passages in Smith's works where the particular book is quoted or alluded to.

In a portly volume entitled *Wealth against Commonwealth* (Harpers, 1894), Mr. Henry Demarest Lloyd has endeavored to give a complete history of the growth of the Standard Oil Company. Unfortunately the work is so full of turgid eloquence and bombastic denunciation that it entirely overshoots the mark. The public is pretty well aware of the past misdeeds of this gigantic combination; what is needed is a dispassionate study of the real economic effects of the trust. This is what Mr. Lloyd has not given, and what no one can give who approaches the subject from the standpoint of the author. The book contains many interesting passages, but is on the whole a distinct disappointment.

The German Verein für Socialpolitik has issued as No. 60 of its publications a study of trusts and monopolies in various countries under the title *Ueber Wirthschaftliche Kartelle in Deutschland und im Auslande* (Leipzig, Duncker und Humblot, 1894). The first part is devoted to Germany and contains ten studies by a number of writers on the more important separate trusts and "syndicates," all brought down to date. The second part is devoted to a study of the general situation in France, Austria, Russia, Denmark and the United States, over two-thirds of the space being devoted to the monograph on the United States by Dr. von Halle. Of considerable value for reference are the 125 pages devoted to a reproduction in English of the important trust charters, by-laws and agreements. We understand that this part of the volume is soon to appear in an English version.

A pleasant proof of the success achieved by the professors of economics in the law faculties in France is afforded by the new (third) edition of the *Cours d'Économie Politique* by Paul Cauwès, of the law faculty of Paris (Paris, Larose et Forcel). The work has now been expanded to four stately volumes and affords the most complete exposition of economics to be found in the French language. M. Cauwès differs from most of his countrymen in that he is well acquainted with the literature of economics abroad as well as at home. But the chief value of the new edition lies in the care and fullness with which practical questions of the day are discussed. To those who desire to keep themselves well informed as to the most recent development in France these volumes will be very welcome.

Students of railway problems will be attracted by the *Histoire des Grandes Compagnies de Chemins de Fer Français dans leurs Rapports Financiers avec l'État*, by Edmond Théry, the editor of *L'Économiste Européen* (Paris, 1894). This is a study of public railway policy in France, with especial reference to the conventions of 1859 and 1883. The volume contains many interesting facts as to the recent development. The author contends that the present situation is dangerous for the government and against the true interest of the companies themselves, and makes an earnest plea for the revision of the financial relations. The recent political episode in France renders this volume especially timely.

In his *Tableau des Origines et de l'Évolution de la Famille et de la Propriété* (Stockholm, Samson and Wallin, Paris, Félix Alcan), Maxime Kovalevsky has made briefly and tentatively a study that will have to be made sooner or later in painstaking detail. He

has examined the evolution of the family and the evolution of property together. Beyond any doubt the successive forms of the family and the successive steps in economic development have been so closely related that no explanation of one is possible without some account of the other. But which has been cause and which effect, has not yet been shown, and this, the real problem, Kovalevsky only touches. He shows the connection in fact between the matriarchal family and a communism in movable goods, between the patriarchal family and agrarian communism, and between the individual monogamic family and the régime of private property. Beyond this he does not get far. Nevertheless, the book is one that the student of the family must have, particularly for its evidence as to the existence of maternal forms of the family among the Slavic peoples.

The French translation of the second part of *Les Lois du Progrès déduites des Phénomènes Naturels*, by R. Federici, is published by Félix Alcan, Paris. It is a rather close and suggestive study of the interaction of individual and social psychology; or, as the author would say, of the creation and perpetuation of the individual *ego* by the collective *ego*, and of the collective *ego* by and through individuals. The philosophy is Comtist, as plainly appears when the reader discovers that Federici makes moral progress a consequent of conscious knowledge of the natural world, rather than of an evolution of moral sentiments.

Canadian Independence, Annexation, and British Imperial Federation, by James Douglas (Putnams, 1894), forms the seventy-eighth number in the Questions-of-the-Day series. The author holds that Canada's lack of progress is attributable partly to natural causes, and partly also to defects in habits and methods of business, but finds that the people are disposed to ascribe it wholly to external causes and to look for a remedy in political changes. He, therefore, regards the present political condition of Canada as only temporary, and independence or annexation to the United States as her ultimate destiny. On annexation, however, as a panacea for Canadian ills, he is not disposed to look with favor. Independence he conceives to be the more probable event as well as the more desirable. As to how this is to be brought about he makes no definite suggestion. Indeed, his description of the sentiment of the great bulk of the people as "distinctly and strongly English," and other statements of like character seem to negative the idea that any radical change in the political condition of Canada is now "imminent." As for

Imperial Federation, Mr. Douglas thinks it more likely to follow than to precede Canadian independence, though the grounds for this belief are rather hard to understand.

Dr. Justin Winsor's *Cartier to Frontenac* (Houghton, Mifflin & Co., 1894) is marked by all the chief characteristics that have won favor for his earlier writings. It is a clear, compendious narrative of the process through which the French explorers and settlers, by way of the St. Lawrence and the Great Lakes, penetrated to the interior valley of the continent and founded France's claim to the empire which was wrested from her in 1763. The period treated covers the exploits of Cartier, Champlain, Nicolet, Joliet and Marquette, Hennepin, Duluth and La Salle. An extensive series of contemporary maps and drawings are reproduced in the work, most of which, like the substance of the text, are to be found in the *Narrative and Critical History*, especially Volume IV. It is eminently proper, however, that Dr. Winsor himself should put into more popular and accessible form some part of that monumental accumulation of historical lore, which is destined for years to come to be a mine for the exploitation of far inferior book-makers.

The forty-seventh number in the series of studies in German *Staats- und Rechtsgeschichte*, edited by Professor Gierke, is entitled *Bodin: eine Studie über den Begriff der Souverainetät* (Breslau, Wilhelm Koebner, 1894), and is the work of Dr. E. Hancke. It embodies a minute analysis of Bodin's doctrine of sovereignty, with a comparison of the views of contemporary writers on the different points involved. It is a most useful work for the student of political philosophy.

STATIC AND DYNAMIC SOCIOLOGY.

I.

THE terminology of social science is at the present time in process of formation. It seems to be pretty generally agreed that Comte's word "sociology" is the best name for the science as a whole; but how the science shall be subdivided and what names shall be given to the subdivisions, are questions by no means settled. The real cause of this unsettled terminology is a lack not only of uniformity but of clearness in the views of different writers upon, and teachers of, the subject.

As one of a considerable number who think that the primary subdivision should be into static and dynamic, I shall attempt in this article to indicate the boundaries which it seems to me proper to set to these two departments. The division, of course, is not my own. It was first employed by Comte, who, notwithstanding his adoption of the name sociology, preferred to consider the phenomena of society as constituting a science of "social physics," and as capable, like those of the inorganic world, of being contemplated in both their static and their dynamic aspects. Mathematician as he was, he sought to carry the subdivision employed in mechanics into this most complex field of phenomena.

Social dynamics [he says] studies the laws of succession, while social statics seeks those of coexistence; so that the general application of the first is properly to furnish to practical politics the true theory of progress, at the same time that the second naturally forms that of order.¹

Mr. Herbert Spencer in his *Social Statics*, even as "abridged and revised" in 1892, nowhere attempts to explain the scope of the term he adopts as the title of his work, but admits that his original use of it was due, though indirectly and uncon-

¹ Philosophie Positive, 3d edition (Paris, 1869), vol. iv, pp. 263-264.

sciously, to Comte. The work itself has so little to do with systematic sociology that we may accept the statement of one of its reviewers that the name seems to have been chosen "only as a means of indicating vaguely that it proposed to treat of social concerns in a scientific manner."¹ In criticising Comte Mr. Spencer has, however, said :

Respecting M. Comte's application of the words *statics* and *dynamics* to social phenomena, now that I know what it is, I will only say that while I perfectly understand how, by a defensible extension of their mathematical meanings, the one may be used to indicate social *functions in balance*, and the other social *functions out of balance*, I am quite at a loss to understand how the phenomena of *structure* can be included in the one more than in the other.²

Passing over other attempts to define static sociology, I will confine myself to noting some recent definitions by American writers. Small and Vincent, in their *Introduction to the Study of Society* (page 66), say :

The conception of static sociology, to which the method of this book leads, corresponds in form, but not in content, with that of Herbert Spencer ; it is the doctrine of the "equilibrium of a perfect society." This use of terms is in sharp contrast with that of Comte.

They define sociology as "the science of social ideals," and add :

It is a qualitative and approximate account of the society which ought to be. By universal consent inquiry about what ought to be has been made the task of ethics. Static sociology is, therefore, an ethical discipline. Social statics is, in brief, social ethics.

I will not say that I do not agree with this, but simply that I do not understand it.

Mr. Ira W. Howerth has recently³ asked the principal students of social science in this country whether 'they approve of the

¹ *North British Review*, XV, 321 (August, 1851).

² Reasons for dissenting from the Philosophy of M. Comte. Appendix to The Classification of the Sciences (London and New York, 1864), p. 44. Also, Essays Scientific, Political and Speculative (New York, 1891), II, 135.

³ *Annals of the American Academy of Political and Social Science*, V, 119 (September, 1894).

subdivision of sociology into descriptive, static and dynamic. Of twenty-three answers received he says that nine are in favor of such a subdivision and fourteen are "opposed," but he does not inform us how these fourteen would subdivide it, if at all. Dr. Small, in his answer, substantially repeats the definition of static sociology above quoted, by calling it "the ideal of society in equilibrium, essential social structure and needs being the criterion." Dr. Ross says that static sociology "seeks to distinguish social types and the forms of institutions, in order to determine the laws of their coexistence and sequence." Professor Dewey says: "Statical, I consider the principles of social organization as such; the structural relations, the morphology."

Most of the authors above quoted also give definitions of dynamic sociology, but I pass these over for the present and speak first of the static side. This I wish to emphasize the more, as it is the side to which I have given little attention in my works. Since nearly all the scientific work thus far done in sociology has been in that field, I have hitherto purposely omitted to treat it; but I have never been at a loss to separate it clearly from the other. Now that the dynamic side is beginning to receive attention, it seems to me that most writers confuse it with the static and that there is great need of making clear the fundamental distinction between the two. While the definitions quoted above doubtless contain much that is true, and do, in a manner, mark off the two departments of scientific sociology (descriptive sociology is only the work of the collector), still they do not seem to me at all satisfactory, and they fail to reach the fundamental principles upon which the distinction rests. Without discussion of the definitions, therefore, I will now proceed to set forth briefly what I conceive those principles to be.

II.

The deeper truths of a complex science are, as a rule, much more clearly apparent in the simpler science upon which it rests. The leading criterion of a true science is the recogni-

tion of the natural forces in obedience to which its phenomena appear. So long as botany and zoölogy consisted entirely in collecting and labeling specimens, they were not entitled to be called sciences ; but as soon as form and structure began to be studied, which was necessary even for the rudest classification, law was recognized ; and law is only the expression of the uniform inherent forces.

Now, in the entire animal kingdom, which of course includes the human species, the most fundamental antithesis in phenomena is between those of *feeling* on the one hand and of *function* on the other. Feeling is the one distinguishing characteristic of the animal world. In the celebrated phrase of Linnæus : "Minerals grow ; plants grow and live ; animals grow, live and feel."¹ For the first time we here encounter a psychic attribute, and throughout the entire range of animal, human and social operations, we must deal with this, which is the only true psychic force. Our distinction between the static and the dynamic begins right here, and it never leaves this primordial base. Feeling is the force of the sentient world ; it is equally that of the social world. It is the spring of all activity and that without which no proper action can take place ; for motion or movement in inanimate bodies is called action only in a metaphorical sense, as borrowed from feeling beings. Everything connected with feeling is therefore primarily dynamic. The equilibrating principle resides in organization. Unorganized force is ineffectual. Organization has for its end the creation of forms which concentrate and inhibit forces and ultimately expend them with economy in intensifying effects. These forms are the various organisms that people the earth. Human beings are the most highly organized of these, and by dint of his intelligence man has become the most numerous of all the developed races. Biotic organization culminates with man, but social organization goes on without change in the principle, and not only creates a great variety of social and political bodies by the orderly grouping of individual

¹ Lapidēs crescunt ; vegetabilia crescunt et vivunt ; animalia crescunt, vivunt et sentiunt. *Philosophia Botanica* (Stockholm, 1751), p. 1.

men, but also establishes a multitude of effective institutions as the social machinery through which economic results are accomplished.

Processes which relate to the production of organisms, social organizations and human institutions are broadly grouped under the head of function. The object of organization being to store energy, — *i.e.*, to bring the psychic forces into a state of equilibrium, so that they can be economically drawn upon and directed into efficient channels, leaving a reserve for future use, — it is clear that, from the very definition, function is essentially static. And here again, as in the case of feeling, there is no stage in the entire range of vital and social organization at which this ceases to be true.

The organized product adapted to economize force consists exclusively of appropriate structures ; therefore the study of structures, whether physical or social, is static. Structures exercise functions, and it is these functions that sustain, continue and mitigate life. All this is also purely static, and in general it may be said that all considerations of structure and function are static. The object of function is essentially the preservation of forms. It has nothing to do with their modification. That a particular organism shall preserve its existence as long as its inherent powers of duration permit, is the first law of functional life ; and this is secured by the process called nutrition. That before the limit of duration is reached it shall provide for the renewal of its form in other individuals of its kind, is the second law ; and this is secured by the process called reproduction. But involved in these processes, and equally belonging to the domain of static phenomena, are the respective facts of growth and multiplication. That an organism, through abundant nutrition, shall increase in size, or that a species, through fecundity, shall increase in numbers, does not alter the general law according to which these processes go on. This is a common stumbling-block to writers on these subjects, who are apt to confound mere growth or simple multiplication with properly dynamic phenomena. This has been done in a conspicuous manner by Mr. Benjamin Kidd in his

Social Evolution, in which all along the growth of population is confounded with "progress." The same kind of mistake is made by Messrs. Small and Vincent in their *Introduction to the Study of Society*, where, at the beginning of Book IV (page 237), after clearly and accurately premising that "social activities have their source in the desires of individuals," they wrongly proceed (§ 114) to apply the term "social growth" to "progress" and "evolution." This is simply to confound static and dynamic sociology. Merely *quantitative* change is static. In dynamic phenomena the change is *qualitative*.

It is easy to see that in biology the greater part of all that has been done, beyond the necessary accumulation of data for study, has been in its static department. All studies of structure (anatomy, histology, morphology) and function (physiology) must be so classed, and some may be at a loss to see what remains. In sociology, though much less has been done, the same is practically true. Sociologists rarely overstep the border of social statics. When they take up the laws of preservation or sustentation, they at once find themselves confronted by the "social organism"; and thereupon they devote themselves either to analyzing the structures of the several organized bodies of society — states, churches, business associations, *etc.* — or to investigating the social operations that produce and distribute the nutritive pabulum of society; that is, they confine themselves to the anatomy and the physiology of society. If they enter the field of the reproductive forces, they encounter on the threshold the institution of marriage and that primary social structure, the family, and rarely go beyond these. All ethnological studies, as of the customs, mythology, religion and arts of primitive peoples, their government, their proprietary laws, and their tribal relations, also belong to this class. Here again it might be supposed that the list was exhausted. And yet we frequently find in the midst of this static work the treatment of topics, such as political revolutions, religious reforms, and the reversal of economic opinion, which clearly belong to social dynamics.

III.

If, then, the static phenomena of sentient life are so clearly marked off and easily recognized, what are the criteria of its dynamic phenomena? Going back to our primary antithesis, we see that they are those that grow directly out of the fundamental fact called feeling. Compelled as we are by the defectiveness of language, due in turn to the defectiveness of human knowledge when language was formed, to express genetic truths in teleological phrase, we may say, without danger of being misunderstood by the well-informed, that the end of nature and that of the organism are not the same, but are entirely distinct. Nature aims only at the preservation of the organism and the continuation of the race. The organism, on the contrary, knows nothing of these ends and has no concern for them. The opposite view which prevails is an illusion. The sole end of the organism is the satisfaction of its desires, which is that which yields pleasure. More accurately speaking, every organism is engaged during its entire life in the business of pursuing pleasure and avoiding pain. If we call the pleasures *plus* and the pains *minus*, the end which the organism has singly in view is to attain the maximum algebraic sum of these conscious states. This is what is meant by feeling as an end.

Now, the conditions under which life has been developed have been such, and could only have been such, that the pursuit on the part of the organism of its end is that which secures the ends of nature. Feeling is adapted to function. Only such desires could be developed under the laws of survival as tended to preserve and perpetuate the creatures possessing them. This to the biologist is a full explanation of the existing state of things, and no other "preëstablished harmony" is required. If, therefore, the creature does but seek its own ends, those of nature will take care of themselves.

The mere action necessary to the satisfaction of desire is the primary dynamic element, but it would be little effective if satisfaction followed immediately. In fact, this rarely or neve

happens, and in the great majority of cases there intervenes the state called *effort*. The organism is perpetually striving to attain its ends. The efforts put forth are often intense and prolonged. The activity manifested is great and the energy expended is correspondingly great. This expenditure of energy has its results quite independent of those of function. Even if the end be not attained, these results are secured. In fact, the more remote and difficult the end, the greater the direct effort applied to removing the difficulties; and the maximum effect is reached in those enlightened human activities in which the attainment of the end depends upon careful calculations and patient elaboration of the means.

In its broadest sense the word dynamic may be taken to describe an advantage, benefit or good, independent of both the individual (feeling) and the race (function) — something that is useful to the world at large or to the general scheme of development or evolution. That is to say, it does not benefit that individual or that race, but institutes processes that are to benefit many or all individuals and races. The direct effects of activities, the results of efforts to secure the ends which the individual has in view, are dynamic in this sense. So far as either nature or the organism is concerned they are incidental and unintended. They have significance and value only to the world at large; in short, they form the elements, and the sole elements, of progress.

But here a precaution is necessary, and a more exact term than progress is needed. The antithesis between the static and the dynamic requires to be still more incisively drawn than has yet been done. We have seen that both growth and multiplication belong to the department of statics. What is the corresponding fact in the department of dynamics? "Progress" is not always sufficiently comprehensive, and "evolution" is open to the same objection. In biology this fact is expressed with considerable accuracy by the word *transmutation*. So long as the type remains the same, the phenomena, whatever they may be, are static; there is permanence and stability. The law that works for this permanence of type is called

heredity. The counter-law that antagonizes heredity and works for instability is called *variation*. Under the harmonious operation of these two antithetical laws *development* has taken place. Variation is primarily due to intense, prolonged and often unsuccessful efforts on the part of organisms to secure their ends. The necessity for such efforts is due to the imperfect adaptation of the organism to its environment. The efforts¹ bring about a more perfect adaptation through modifications in the type, and this usually, but not always, secures an advance in the type. This is development. If, however, a lower type is better adapted, the result is degeneracy. In either case it is transmutation. In either case it is a dynamic phenomenon.

It would be easy to expand this part of the subject and show that all the transformations that have taken place in the animal world have been the result of such efforts on the part of the creature for the attainment of its ends.² Some idea of the vivifying influence that springs from the study of any science on its dynamic side may be gained by a comparison of what biology has become since Darwin, who may be said to have founded dynamic biology, with what it was under Cuvier, when the dynamic principles of Lamarck were treated with disdain. What Darwin taught is not so much the origin of species as the transmutation of species. He diverted attention from life structures to life movements. Just as geologists, before Hutton and Lyell had established the uniformitarian law of dynamic geology, regarded the earth's crust as stationary and accounted for changes that they perceived had taken place by the doctrine of cataclysms, so pre-Darwinian biologists, with a few notable exceptions, regarded species as fixed, and accounted for variety and

¹ The word "efforts" is not used here in a strictly Lamarckian sense, but is intended to include all modifications due to natural selection and the mingling of different ancestral germ plasmata that tend to variation. All these conditions of change are due to the universal *nisus* of life, pressing everywhere for more perfect adaptation, which may properly be characterized as effort. Darwin himself, who cannot be suspected of not clearly seeing the indirect influences, characterized it as the "struggle of the favored races," or the "struggle for existence," but it would be more accurately described as a struggle for the satisfaction of desire.

² I have done this to some degree in *Psychic Factors of Civilization*, chap. xiv, to which I venture to refer the reader.

multiplicity of organic forms by the doctrine of special creation in each case. The revolution in geology was not more complete than that in biology. The static laws of both still remain, but it needed the dynamic laws also to make the two sciences complete. Both the static law of heredity and the dynamic law of variation are summed up in the happy phrase of Darwin, "descent with modification."

Is anything analogous to this in store for sociology? Surely this youngest of the sciences need not complain if it is compelled to wait yet a long time in its static stage. But the world moves, and the history of other sciences proves that this too must possess a dynamic department. The search for the key to it has already begun, and if rewarded with success, will doubtless reveal the secret of social evolution. That the dynamic principle must reside in the affective department of man's psychic nature, admits of no doubt; and that it should be essentially different from that of all other life, is not to be expected. A slight modification of the terms and the substitution of synonyms more applicable to the human sphere of action are all that is required. If the lower organisms seek pleasure — so does man, but we may call it happiness. If desire is their sole motive power — so it is his, but we may call it want. Efforts and satisfactions are the same in both spheres, only, as already remarked, the former are much more prolonged in a being that can foresee future results, and the dynamic effects are correspondingly increased. These effects are transmutations and adaptations in the one case as in the other, but here we encounter an essential difference. In the one case the organism is transformed to adapt it to the environment; in the other the environment is transformed to adapt it to the organism. In so far as we deal with physical modifications in man's bodily structures, we are treating of dynamic biology. When we deal with modifications in his surroundings and in his relations to the universe, we are treating of dynamic sociology.

All social structures may be embraced under the general term *institutions*. Social functions are the operations con-

ducted by institutions. Institutions, like bodily structures, are exceedingly numerous and multiform, and social functions are correspondingly manifold and varied. Looked at for any given point of time, they seem stationary ; but viewed from the standpoint of history, they give evidence of continuous though slow and uneven change. Compared with the changes going on in organic structures the modifications of social structures are, it is true, very rapid ; but to those who see and are trying to remedy defects the persistence of social structures seems to be needlessly great. Dynamic sociology is the science which considers this change in social structures and functions. There is a principle in society called *conservatism* — corresponding to that of heredity in biology — which tends to preserve social structures. Their very existence, as in organic structures, is a proof of their usefulness, and their destruction, or even their modification, is strenuously resisted. But no structure is ever perfectly adapted, and all must ultimately reach a point at which the adaptation begins to grow less and less. The time at length arrives when change is essential to continued existence. In societies, no less than in races of animals, those which cannot change must perish. The persistence of social structures is that which we understand by social order. The change of social structures in the direction of greater adaptation is social progress, and this must be true even though it require a lower type to secure the adaptation. Such cases, however, are rare, and progress in society, like development in the organic world, is in the main an advance in the direction of perfecting the types of structure. As a rule these advantageous modifications take place gradually and imperceptibly, though seldom at a uniform rate ; but the rhythm is often more marked, and long periods of stagnation are followed by what are called reforms or even revolutions.

In a general way all this has been recognized, but very few attempts have been made to arrive at the initial principle according to which these qualitative changes in the types of social structure take place. Bastiat struck the keynote when he said that the whole science of man could be summed up in

the three words : wants, efforts, satisfactions.¹ But really the last of these factors, though the end of the other two, would be fatal to movement if it followed immediately upon the first. Want is the motive power to all social phenomena — the real social force, but all change is the result of effort, and would attend it even if satisfaction were not attained. Comte utters the purely dynamic truth even more correctly when he says that “mental activity [which he explains in the next sentence not to mean the higher speculative activities of the mind] is only persistently maintained by the continued pressure of the various human wants, the immediate satisfaction of which is happily not possible without persistent efforts.”² Herbert Spencer has recognized the same truth,³ and in fact it forms the basis of what is true in individualism, in defending which he and other writers have made an entirely unwarranted application of it. Professor Clark sees it in its proper light,⁴ and several of the replies to Mr. Howerth’s question embody the germ of it. For example, Professor Dewey says : “Dynamic is the theory of social movement as such ; the functioning of the organs so far as they involve *modifications of structure*.” Dr. Ross also says : “Dynamic studies the forces underlying social phenomena and causing *movement* and change.” Still more recently⁵ he has slightly elaborated his view and furnished some examples, showing a clear grasp of what may be called economic uniformitarianism.

The principle according to which efforts become so important is that their influence is not confined to the individual, but extends to all individuals and to society at large. Just as in

¹ “Besoins, efforts, satisfactions, voilà le fond général de toutes les sciences qui ont l’homme pour objet.” *Journal des Économistes* for September, 1848, vol. xxi, p. 110. The article (pp. 105–120) is entitled : “Harmonies Économiques,” which is also the title of the sixth volume of his complete works (Paris, 1854). The second chapter of this volume (pp. 40–54) is entitled : “Besoins, Efforts, Satisfactions,” and consists of the article considerably expanded, but does not contain the sentence quoted. The article and chapter as a whole are somewhat disappointing when read from the present standpoint.

² *Philosophie Positive*, vol. iv, p. 224.

³ See his *Principles of Biology* (New York, 1873), vol. ii, p. 499 (§ 373).

⁴ *Philosophy of Wealth*, p. 56.

⁵ *University Extension* for November, 1894, vol. iv, p. 138.

biology it is not the particular organism or the particular race, but the organic world in general that is benefited by the struggle for existence, so in the social sphere it is neither the individual nor his direct family or line, but society at large that is the recipient of the advantageous consequences of dynamic activities. In breaking a new way to the satisfaction of a particular individual's wants, a means is secured of satisfying like wants of all other individuals, and they appropriate it and reap the benefits. Just as the pioneer who cuts a road through a forest and goes on, never to use it again, is soon followed by others until it becomes a great highway, so the results accomplished by the efforts of the individual, though only useful to him for the time being, remain as the initial steps in the material civilization of the world. A dynamic action is one that affects not merely the primary agent at the particular time, but all other agents for all time. Such actions are sometimes called "fructifying causes." They are pregnant with future consequences. Static actions leave matters in the same state after as before their performance. Dynamic actions create a new state in which small efforts produce relatively great results. The routine work of the housewife in preparing meals, washing dishes, making beds and cleaning house, is purely static, and must be done over and over again each day in a perpetual round with no ulterior effects; but one who organizes new and improved methods of housekeeping or invents labor-saving machines and utensils is engaged in dynamic work, which economizes social energy and husbands the strength of thousands forever afterward. Charity work is chiefly static and supplies only temporary and ever-recurring wants. The highest philanthropy consists in such deeds as tend to diminish the number of indigent persons and thus to render charity unnecessary.

This principle applies with equal force to all three of the primary classes of social wants—the life-sustaining, the life-continuing and the life-mitigating forces. The first of these classes constitutes *par excellence* the field of political economy, or social economics, since it relates directly to the means of

subsistence. In this department the dynamic point of view is that of *consumption*. The older economists almost completely ignored this factor, recognizing it, if at all, only to deny its legitimacy as a part of political economy. Mr. John Stuart Mill probably reflected the consensus of opinion on this question when he said: "Political economy . . . has nothing to do with the consumption of wealth, further than as the consideration of it is inseparable from that of production, or from that of distribution."¹ But some of the economic writers of our day have begun to understand the true meaning of consumption, and are working along that line. As early as 1871 Professor W. Stanley Jevons, after intimating that "dynamical branches of the science of economy may remain to be developed,"² proceeds to say:

Political economy must be founded upon a full and accurate investigation of the conditions of utility; and to understand this element we must necessarily examine the character of the wants and desires of man. We first of all need a theory of the consumption of wealth.³

Gen. Francis A. Walker approached the problem in the following language:

The chief interest of political economy to the ordinary reader, its chief value to the student of history, must be in the explanation it affords of the advance or the decline of the productive power of nations and communities; and it is only in the consumption of wealth that we find the reasons for the rise of some and the fall of others, from age to age.⁴

It is seen by such writers that from the standpoint of the individual the sole object of production and distribution is the satisfaction yielded in consumption, and that although the individual cares nothing for benefits that accrue to society from his efforts to attain that satisfaction, still these efforts do furnish such benefits, advantageously modifying human institutions and thus causing social progress.

¹ *Essays on some Unsettled Questions of Political Economy*, 1st edition (London, 1844), p. 132, footnote.

² *The Theory of Political Economy*, Preface, pp. viii-ix.

³ *Ibid.*, p. 46.

⁴ *Political Economy* (New York, 1883), pp. 298-9 (§ 329).

The second primary group of social wants, the life-continuing forces, are still unrecognized in their dynamic aspect. And yet fully one-half of the energy of society is expended in this direction. It is not conceived that anything scientific can be coupled with such a passion as love. This field is turned over exclusively to the poets and romance writers. These, however, probably produce more literature than all other writers combined, and their books are greedily devoured by millions who do not know what science means. A well-conceived romance constitutes one of the best illustrations of the distinction between social dynamics and social statics. It represents the former exclusively. It paints the passion and records the struggle, but satisfaction once attained, it ends. In scientific phrase, it deals with a social want and the effort to supply it; but when these culminate in the social institution, marriage, and crystallize into the social structure, the family, the romance is ended, and the scientific treatise may begin. Yet it is through these prolonged and eventful struggles — the wooings and waitings, the rivalries and jealousies, the chivalry and constancy, the obstacles and disappointments — that character is formed, heroism displayed, labor performed, wars waged, empires founded, fame achieved, and the face of nature transformed.

The third primary class of social wants, the life-mitigating forces, are chiefly derived from the other two, and represent the surplus energy that any given social state may afford after satisfying these. They are the aesthetic, moral and intellectual cravings of civilized men. The efforts put forth for the realization of ideals of beauty, righteousness and truth are the noblest that life elicits, and from them flow art, beneficence and intelligence. The study of these highest aspirations of the soul and the dynamic transformations that attend them is clearly a thing apart from the study of the institutions to which they give rise, considered as finished products.

IV.

To sum up, then, the test of a static phenomenon is that it shall relate to function, *i.e.*, shall have directly or indirectly to do with some one of nature's ends in sustaining, continuing or mitigating life. This includes all structures and the metabolic processes necessary to maintain, renew, increase and multiply them, but not the conditions which change or modify them. Social structures are institutions, in the broadest sense of that term, and static sociology embraces the study not only of the nature of institutions, but of all that they accomplish in their normal capacity — their anatomy and physiology. However well it may be known that they are undergoing change, this must be left out of view, and they must be studied as so many facts, *i.e.*, contemplated as fixed, just as the systematic botanist or zoölogist contemplates the species of plants or animals.

Sociology as a science recognizes society as a theater of forces, and this as well in its static as in its dynamic aspect. The three primary groups of social forces are the life-sustaining, the life-continuing and the life-mitigating wants. These result in organization, and the purpose of organization is the production of mechanisms for economizing energy. Such mechanisms accomplish their object by securing an equilibrium of forces, and the study of social forces in equilibrium is static sociology.

The organs adapted to sustaining social life are chiefly those institutions within the scope of political economy that may be studied from the standpoint of their nature or of their action — anatomically or physiologically — both of which studies belong to static sociology.

The organs adapted to continuing social life are chiefly marriage institutions and the family, but they may be studied comparatively and made to include all forms of marriage and the whole subject of kinship. So long as these various institutions, no matter how diverse in different nations and ages, are considered as they actually are, or as they were at any given time,

and not as in process of transformation, the limits of social statics are not transgressed.

The organs adapted to mitigating social life include all the institutions that cluster round art, religion, ethics, literature and science. Each of these vast fields is capable of being studied in its statical aspects as a product of social organization.

In sharp contradistinction to all this, the test of a dynamic phenomenon is that it shall relate to feeling and shall have to do with the direct effects of action in the effort to satisfy want, *i.e.*, with the ends of the individual in some one of the three primary classes. The effects themselves are incidental and unintended so far as the ends of the agent or of nature are concerned, but they constitute the only element of change in the types of structure.

In society these changes serve to adapt man to his surroundings, to modify and reform human institutions, and in general to cause social progress. Dynamic as well as static sociology deals with the social forces, *i.e.*, with social wants; and in the one case as in the other these are divisible into such as respectively sustain, continue and mitigate life. The dynamic factor in each is effort. In the first the satisfaction comes in the act of appropriating, or, in economic phrase, of consuming. This stimulus leads to every form of economic movement, and is what makes the wealth of nations. In the second the stimulus not only prompts the greatest deeds, but, what is more important, its quiet universal working makes the homes of all lands. In the third we see the simultaneous development of art, religion, morals, education, science and industry. All these movements in harmonious coöperation work the changes that go on in social institutions, and constitute what is known as social progress.

It may be remarked, in conclusion, that there has been a perceptible tendency during most of the nineteenth century to break away from the objective or static standpoint in thought and to consider things in their subjective or dynamic aspects. This tendency has manifested itself in all the higher departments of science. The great biological revolution has already

been referred to. In psychology it took the form of a transfer of attention from thought to feeling, from intellect to sense. Kant led the way by recognizing the subjective aspect of mind (*Sinnlichkeit*) as worthy of scientific study, though he did not himself study it, but Schopenhauer, embodying it in the term *Will*, made it the "thing-in-itself," and revolutionized the philosophy of mind. Bain's study of the emotions and the will and Spencer's estho-physiology gave this side of the subject the sanction of science, and led the way to modern experimental psychology. In sociology Comte insisted upon the "affective" faculties as a factor in social physics, and in his later writings elaborated his *philosophie du cœur*, which as eminent and conservative a psychologist as Professor Wundt, notwithstanding the prevailing opinion, declares not to indicate a diseased mind.¹ All these influences, coupled with the universal study of the sub-human stage of life, where feeling is well-nigh supreme, worked a great change in the standpoint from which everything was to be viewed, amounting to little less than an *Umwertung aller Werthe*. The economists who are founding a dynamic economics, based on consumption as the prime factor, may imagine that they are independent of these influences; but in such a supposition they are greatly mistaken. They may not have gone back to learn the sources of their thoughts, but the air is full of the new philosophy, and they have simply drawn from the common reservoir. They are as much the creatures of the modern *Zeitgeist* as was the author of *Dynamic Sociology* in 1883, and the entire movement is one of the clearest examples of the dynamics of mind.

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¹ See Heinrich Waentig, *Auguste Comte und seine Bedeutung für die Entwicklung der Socialwissenschaft* (Leipzig, 1894), p. 92.

THE INCOME TAX IN THE AMERICAN COLONIES AND STATES.

THE recent discussion as to the constitutionality of the income tax has aroused some interest in the query whether the taxation of incomes is, after all, such a novel thing in American experience. While we have all heard much about the federal income tax of the Civil War period, we look in vain for any account of earlier instances. It may be well, then, to put on record the facts of income taxation in the American colonies, to compare the colonial taxes with analogous taxes in the American commonwealths of the present century, and to ascertain, if possible, how far these imposts really deserve the name of income taxes.¹

I. *The Beginnings.*

The first general tax law in the American colonies, with the exception of the early poll-tax in Virginia,² was the law of 1634 in Massachusetts Bay.³ This provided for the assessment of each man "according to his estate and with consideration of all other his abilityes whatsoever." It is probable that the measure of this ability was to be found in property; for, although the law itself does not further explain the term, the matter is elucidated in a provision of the next year, that "all men shall

¹ This essay was originally written, with the exception of a few paragraphs, about two years ago, and was intended to form a chapter in a general work on the income tax. At the request of Mr. Clarence A. Seward, one of the counsel in the recent income-tax cases before the United States Supreme Court, a portion of this essay was submitted to him in manuscript form, and was utilized with my consent in the preparation of the monograph submitted by him in the original hearing as a supplementary brief. The majority of the quotations in that monograph (pp. 22-28) are taken from the manuscript essay.

² For the early Virginian legislation, see Ripley, *Financial History of Virginia*, 17-24 (Columbia College Studies in History, Economics and Public Law, vol. iv, no. 1).

³ Colonial Records of Massachusetts Bay (Shurtleff's ed., 1853), I, 120.

be rated for their whole abilitie, wheresoever it lies.”¹ This seems to imply only visible property; for such property alone is susceptible of a *situs*.

It was not until several years later that “ability” was defined to include something more than mere property. This, however, occurred not in Massachusetts Bay, but in the colony of New Plymouth. In 1643 assessors were appointed to rate all the inhabitants of that colony “according to their estates or faculties, that is, according to goods lands improoved faculties and personall abillities.”² This law is noteworthy for a double reason. It is the first to use the term faculty, and it distinguishes faculty and personal ability from visible property. But although it provides for a faculty tax, it does not tell us exactly how to measure this faculty. This was reserved for the more comprehensive law enacted three years later by the Court of Assistants of the Massachusetts Bay Company. The court order of 1646 provides not only for the assessment of personal and real estates, but distinctly mentions “laborers, artificers and handicraftsmen” as subject to taxation, and then goes on to say:

And for all such persons as by advantage of their arts and trades are more enabled to help bear the public charges than the common laborers and workmen, as butchers, bakers, brewers, victuallers, smiths, carpenters, taylors, shoemakers, joyners, barbers, millers and masons, with all other manual persons and artists, such are to be rated for returns and gains, proportionable unto other men for the produce of their estates.³

Here for the first time we have the definition of faculty or ability. Just as the faculty of the property owner is seen in the produce of his estate, so that of “artists” and “tradesmen” is to be found in their “returns and gains.” Of course, since the property value of an estate is approximately equal to the capitalized value of the annual produce, the faculty of the

¹ Colonial Records of Massachusetts Bay, I, 166.

² Records of the Colony of New Plymouth: Laws 1623-1682 (Pulsifer's ed.), XI, 42.

³ Colonial Records of Massachusetts Bay, II, 173. Cf. II, 213, and III, 88.

property owner can be measured by the value of the property, that is, by the value of his "estate"; but when there is no property, the assessors are compelled to fall back on the "returns and gains."

The principle thus laid down in the records of Massachusetts Bay was soon adopted by other colonies. The colony of New Haven, for instance, at first levied a land tax. But as early as 1640 personal property was assessed, by the provision that a new rate should be "estreeted, halfe upon estates, halfe upon lands."¹ In 1645 it was seen that even this was not adequate, and a proposal was made to tax others besides property owners; but no decision was reached at that time.² As the dissatisfaction grew, a committee was appointed in 1648 to inquire into the feasibility of the Massachusetts system of taxing all property in general, and also of levying a tax on the profits of those who possessed no property.³ The committee reported that they were in doubt as to the advisability of taxing houses and personal property, but that "for tradesmen they thinke something should be done that may be equall in waye of rateing them for their trades." As a result the law of 1649 was enacted, which introduced the taxation of profits of laborers, tradespeople and others.⁴

¹ Records of the Colony and Plantation of New Haven, I, 40.

² The court considered "how heavy the publique chardges grew, that most of them have bin expended for the publique safty and about things of common public vse, wherein all that live in the plantation have a like benefit in their proportions, and yet many live in the plantation and have manny priveledges in it have hitherto borne noe part of these publicque chardges, wherevppon it was debated whether or noe in equety such should not be rated some way or other for time to come, so as those that have borne the whole burden hitherto may be eased; but because it was not ripe for an issue, the court referred to . . . a committee." Records of the Colony and Plantation of New Haven, I, 181.

³ Lieut. Seely propounded that the court would "consider of some other waye of rateing men than is settled by lands for divers men wch had good estates at first and land answerable, whose estates are sunke and they not able to paye as they did, and divers psons whoe had land for their heads, whose estates are smalle, yett paye great rates, and others whose estates are increased, haveing but little land, paye but a small matter to publique charges," *etc.*, *etc.* Records of the Colony and Plantation of New Haven, I, 448.

⁴ The reason given was: "Seeing that labourers and handycrafe trades & seamen are of divers sorts & conditions, some live more comfortably, some less, some follow ther trades more and some less, ther time being taken vp more aboute

In Connecticut the early laws were patterned on the Massachusetts Bay legislation. It was provided in 1650 that "every inhabitant who doth not voluntarily contribute proportionably to his abillity to all common charges shall be compelled thereunto by assessments and distress"; and it was further provided that the lands and estates should be rated "where the lands & estates shall lye," but "theire persons where they dwell."¹ Then follow detailed instructions how to assess various kinds of property. The final clauses in these instructions provide for the faculty tax on all "manuall persons and artists," *etc.*, following word for word the Massachusetts Bay law of 1646, as quoted above. These provisions are frequently repeated in the laws of the seventeenth century.

In Plymouth Colony the practice inaugurated by the law of 1643 continued, although we find only two more instances where it is expressly mentioned, namely, in 1665, when "visible estates and faculties" are spoken of,² and in 1689, when a court order fixed the valuation for different kinds of visible estate, but left the valuation of "faculties and personall abillities" to be determined "at will and doome."³

In Rhode Island the faculty tax was introduced a little later. In 1673 the assembly laid down the rule that taxes ought to be assessed according to "equety in estate and strength," *i.e.*, not only according to the property, but also in proportion to what was elsewhere called the "faculty," or "profits and gains."⁴

husbandry wch payes another way, that therefor a due consideration be had, and every man justly rated as neere as the co^mmittee can judge, and that other men whoe trade in way of merchandizing bee duely rated according to their trades and stockes they improve, as neere as they can judge." *Ibid.*, I, 494.

¹ Colonial Records of Connecticut, I, 548.

² Records of the Colony of New Plymouth (Pulsifer's ed.), XI, 211; Shurtleff's ed., IV, 102.

³ Records of the Colony of New Plymouth, VI, 221.

⁴ "This assembly, taking into consideration the great dissatisfaction and irregularity that hath been by makeinge rates or raisinge a common stock for public charges in this Collony in general or for any perticular towne, and the great faileableness to accomplish it and great delaies in performance, what was done, and the necessity there is for publick charge to be borne, and the justice it should be done according to equety in estate and strength," *etc.*, *etc.* Colonial Records of Rhode Island, II, 510.

In Rhode Island we find moreover the curious survival of the mediæval practice that every man should assess his neighbor as well as himself.¹ Later on "three able and honest men" were chosen in each town to "take the view of each of their inhabitants," and as to "the merchants and tradesmen to make this part of the rate according to the yearly profit."²

Outside of New England this early taxation of profits by the side of the general property tax is found also in New Jersey, where it was provided by the law of 1684 that not only property owners, but also

all other persons within this province who are free men and are artificers or follow any trade or merchandizing, and also all inn-holders, ordinary keepers and other persons in places of profit within this province, shall be lyable to be assessed for the same according to the discretion of the assessors.³

This completes the list of examples of the faculty tax during the seventeenth century. Later on, as we shall see, the tax appeared in some of the Southern states. In New York it never secured a foothold. During the Dutch domination the tax system of this latter colony was composed almost entirely of excises and duties; when the English obtained control, the general property tax was introduced, but without any additional "faculty" tax as in the New England colonies.⁴

¹ The individual shall be required to "give in writeinge what proportion of estate and strength in pertickelar he guesseth tenn of his neighbours, nameinge them in pertickular, hath in estate and strength to his estate and strength." *Ibid.*, II, 512.

² *Ibid.*, III, 300 (1695).

³ Laws of New Jersey, 1664-1701 (Leaming and Spicer), 494.

⁴ Ely, in his *Taxation in American States and Cities*, 110, says that "the estimated incomes of certain classes were taxed." The context is not clear, but Professor Ely could only have meant that this was the case in New England, whose tax system is described in the New Netherland document to which allusion is made. Yet this passage was quoted in the brief submitted by Mr. Seward to the Supreme Court as showing that the system was to be found in New Netherland. This is a complete mistake. No such system ever existed in New Netherland. Mr. Seward's mistake is not wholly inexcusable, because it is not easy to ascertain from Dr. Ely's text whether he is referring to New England or to New Netherland.

II. *The Eighteenth Century.*

During the eighteenth century the custom of assessing profits continued and extended to other colonies. In Massachusetts more earnest and repeated efforts to explain and enforce the law were made than anywhere else. This will be our excuse for tracing the legislation in more detail.

Upon the union of the Plymouth and Massachusetts Bay colonies into the Province of Massachusetts, under the charter of 1692, a law was immediately enacted providing that all estates whatsoever, real and personal, should be taxed at "a quarter part of one year's value or income thereof." But this was not very clear. Nor was the doubt removed by another law of the same year, to the effect that "every handicraftsman" be valued "for his income."¹ In 1697, however, we find the old terms used as of general application. The assessors are now again cautioned to rate the taxpayers, "having due regard to persons' faculties and personal abilities." In 1698 the clause "not excluding faculties" is inserted. And in the following year the assessors are instructed to tax "incomes by any trade or faculty which any persons do or shall exercise."² A few years later fuller instructions are given. Thus in 1706, the assessors are admonished to rate

income by any trade or faculty, which any person or persons (except as before excepted) do or shall exercise in gaining by money, or other estate not particularly otherwise assest, or commissions of profit in their improvement, according to their understanding and cunning, at one penny on the pound, and to abate or multiply the same, if need be, so as to make up the sum hereby set and ordered for such town or district to pay.³

The law of 1738 adds the words "business or employment," commanding the assessment of

the income or profit which any person or persons (except as before excepted) do or shall receive from any trade, faculty, business or

¹ Acts and Resolves of the Province of Massachusetts Bay, 1692 to 1780 (5 vols.), I, 29, 92.

² *Ibid.*, I, 302, 413.

³ *Ibid.*, I, 592.

employment whatsoever, and all profits which may or shall arise by money or other estate not particularly otherwise assessed, or commissions of profit in their improvement. . . .¹

Except as to the rates, this form of law continued unchanged till 1777. The law enacted in this year gives a fuller interpretation of income than any hitherto. Taxpayers are assessed

on the amount of their income from any profession, faculty, handicraft, trade or employment; and also on the amount of all incomes and profits gained by trading by sea and on shore, and by means of advantages arising from the war and the necessities of the community.²

Again, the law of 1779 provides that,

in considering the incomes and profits last mentioned, the assessors are to have special regard to the way and manner in which the same have been made, as well as the quantum thereof, and to assess them at such rate, as they on their oaths shall judge to be just and reasonable; provided, they do not in any case assess such incomes and profits at more than five times [increased in the next year to "ten times"] the sum of the same amount in other kind of estate.³

In 1780, a constitution was adopted which commanded, among other things, that the public charges of government should be assessed "on polls and estates in the manner that has hitherto been practiced." The same methods, therefore, continued to the end of the century.

In none of the other colonies do we find so full or so frequent indications of the legislative intent as in Massachusetts. But occasional references are found to the practice of assessing income. And although it is probable that the custom was gradually dying out, the storm and stress of the Revolutionary period brought it again to the front in several places.

In Connecticut we have seen that the early laws followed almost word for word the Massachusetts legislation. Later acts provided that

¹ Acts and Resolves of the Province of Massachusetts Bay, 1692 to 1780 (5 vols.), II, 934. ² *Ibid.*, V, 756. ³ *Ibid.*, V, 1110, 1163.

all such persons who by their acts and trades are advantaged shall be rated in the list . . . proportionable to their gains and returns, — butchers, bakers . . . and all other artists and tradesmen and shopkeepers.¹

As the assessors might find it difficult to rate them justly, the law sometimes gave more explicit directions as to fixing the income. Thus the following was enacted in 1725: "For the future every one of the allowed attorneys at the law shall be set in the annual list for their faculty, *i.e.*, those that be the least practitioners fifty pounds, and the others in proportion to their practice."² It may be doubted whether even this settled the matter definitely.

Later enactments prove, however, that instead of directly estimating the profits of the taxpayers liable to the tax, the assessors used different criteria to compute the amount. For instance, it had several times been provided that "all traders, tradesmen and artificers shall be rated in the list proportionable to their gains and returns." But as there seems to have been no uniformity in the methods employed, the following important act³ was passed in 1771:

All traders or shopkeepers in this Colony shall be rated in the list after the rate of ten *per cent* on the prime cost of all goods, wares, and merchandizes which they purchase for sale by retail (except the produce and manufactures of this Colony). And all traders by wholesale, tradesmen, artificers, tavern-keepers, and others by law rateable on account of their faculty or business, shall be rated in the list to the amount of their annual gains, incomes or clear profits by means of their business, according to the best estimate that can be made thereof by the listers, who shall assess such traders, tradesmen, &c. by their best discretion, agreeable to the rules aforesaid. But when it appears that any persons have been unsuccessful or sustained considerable losses in their trade, in such cases the listers may make proper abatement for the same. And if any person shall be assessed by the listers for any of the matters aforesaid more than at the rates aforesaid, upon proof thereof, by oath or otherwise, to the satisfac-

¹ Acts and Laws of Connecticut (New London, 1715), 100.

² Colonial Records of Connecticut, 1717-1725, VI, 525.

³ *Ibid.*, 1768-1772, XIII, p. 513.

tion of the listers, or authority and selectmen, who have right by law to grant relief, such overcharge may be abated.

The faculty tax continued in Connecticut to the close of the century substantially unchanged, with the exception that ordinary artisans were subsequently exempted. Secretary Wolcott, in his famous report on direct taxes in 1796, described the tax system as embracing first, a tax on various kinds of property, real and personal, and second, "assessments proportioned to the estimated gains or profits arising from any and all lucrative professions, trades and occupations, excepting compensations to public officers, the profits of husbandry and common labor for hire." This second element was included in the annual lists of taxable property as "assessments on lawyers, shopkeepers, surgeons, physicians, merchants, *etc.*"¹

In Rhode Island, where the faculty tax was originally levied as in the neighboring colonies, it seems to have fallen into disuse somewhat earlier. In 1744 the tax law still provides "that the assessors in all and every rate shall consider all persons who make profit by their faculties, and shall rate them accordingly."² This is the last direct mention of the faculty tax. In 1754 and 1755 the only taxes named are those on "estates and polls."³ This expression might possibly still be considered to include faculties. But in the revision of 1766, which served as a basis of valuation during the remainder of the century, we search in vain for any mention of the faculty tax.⁴ And when Wolcott drew up his report in 1796, he described the system of taxation simply as one "on polls and the collective mass of property."⁵ It may safely be said, therefore, that the faculty tax had disappeared in Rhode Island by the middle of the century.

¹ American State Papers, Finance, I, 423, 454.

² Acts and Laws of His Majesty's Colony of Rhode Island and Providence Plantations (Newport, 1745), 295.

³ Records of the Colony of Rhode Island, V, 309, 465. A curious protest against the arbitrariness in the assessment of the general taxes is to be found in 1766. *Ibid.*, VI, 518.

⁴ Acts and Laws of the English Colonies of Rhode Island and Providence Plantations, 219.

⁵ American State Papers, Finance, I, 422.

In New Hampshire the faculty tax came late into use. The first detailed assessment law passed in the province, in 1719, instructed the selectmen to assess the residents "in just and equal proportion, each particular person according to his known ability and estate." Later on, in 1739, "an act for the more easy and speedy assessing" of taxes was passed, which authorized the selectmen to assess "the polls and estates of the inhabitants, each one according to his known ability."¹ In 1772 greater definiteness was attained by the provision that a person's "faculty" should be estimated at the discretion of the assessor, although not at a sum over twenty pounds.² Before the close of the century, however, the tax had disappeared. For the law of 1794, which fixed all the details of the state's system, while taxing tradesmen, storekeepers and others, assessed them merely on their stock in trade as a part of their personal property.³

In New York, as we know, there never was any faculty tax. But Vermont, when it split off from New York, followed the example of Connecticut in taxation as in much other legislation. The first law on the subject, that of 1778, is very explicit in its provisions, and repeats the Connecticut law in some places word for word.⁴ The part of interest to us is as follows :

Be it further enacted by the authority aforesaid, that all allowed attorneys at law in this commonwealth, shall be set in the annual list for their faculty, — the least practitioner fifty pounds, and the others in proportion according to their practice ; to be assessed at the discretion of the listers of the respective towns where said attorneys live during their practice as such. All tradesmen, traders, artificers, shall be rated in the lists proportionable to their gains and returns ; in like manner, all warehouses, shops, workhouses and mills where the owners have particular improvement or advantage thereof, according to the best judgment and discretion of the listers.

¹ Acts and Laws of his Majesty's Province of New Hampshire (1761), 30, 180.

² Law of Jan. 2, 1772.

³ Law of February 22, 1794 ; New Hampshire Laws of 1793, 472.

⁴ An Act directing Listers in their Office and Duty. Printed in Laws of Vermont, 1779 (295 of Slade's State Papers). No copy of the laws of 1778 is known to be in existence. The laws of that year were embodied in the volume for 1779. See Wood, History of Taxation in Vermont, 32 and 36 (Columbia College Studies in History, Economics and Public Law, vol. iv, no. 3).

In 1791 attorneys also were assessed "proportionable to their gains according to the best judgment and discretion of the listers."¹ And in 1797 the general provision was inserted that "all licensed attorneys, practitioners of physic or surgery, merchants, traders, owners of mills, mechanics, and all other persons who gain their livelihood by buying, selling, or exchanging, or by other traffic not in the regular channel of mercantile life," be listed in proportion to their returns.²

Outside of New England, the faculty tax was to be found also in Pennsylvania, though not until after the Revolution had commenced. In 1782 a law was enacted which imposed a poll tax on all freemen. But the law went on to say that

all offices and posts of profit, trades, occupations and professions (that of ministers of the gospel of all denominations and school-masters only excepted) shall be rated at the discretion of the township, ward or district assessors, and two assistant freeholders of the proper township, ward or district, having due regard to the profits arising from them.³

In 1785 mechanics and manufacturers were added to the list of exempted classes. The discretion which this act left to the assessors was very slight, as the lower and higher limits of the tax were definitely fixed. In distinction from the faculty tax proper, this might rather be termed a classified poll tax with a very low maximum. For instance, freemen of no profession or calling might be assessed from fifty cents to ten dollars; mechanics and tradesmen, thirty cents to two dollars; tavern-keepers, shop-keepers and other retailers, fifty cents to five dollars; brokers, bankers, merchants, lawyers and physicians, one to ten dollars; persons of professions or occupations not before described, twenty-five cents to eight dollars. These rates applied only when the tax on real property amounted to one per cent. When the rate fell below this, the "taxes on occupations and professions," as they were called, were to be proportionately reduced.⁴

¹ Laws of 1791, 266.

² Compilation of Laws of 1797, 565. See Wood, *op. cit.*, 39.

³ Laws of the Commonwealth of Pennsylvania (Dallas), II, 8.

⁴ American State Papers, Finance, I, 428.

In Delaware, also, we find the faculty tax. The law of 1752, indeed, simply provided that all persons should be assessed on their estates. But that this included more than mere visible property, is apparent from the section which states that single men who have no visible estates shall be assessed at not less than £12 nor more than £24, and that in all cases the assessors shall pay "due regard to such as are poor and have a charge of children."¹ When Wolcott described the system, he spoke of it as based on the assessment of profits. But in 1796, when a new law was passed, provision was made for "ascertaining the stock of merchants, tradesmen, mechanics and manufacturers, for the purpose of regulating assessments upon such persons, proportioned to their gains and profits."² In other words, stock in trade was now assessed as personal property.

Even in the more southern states the faculty tax was not unknown. In Maryland, during the colonial period, the tax system was very primitive; as its historian states, taxes were levied "by even and equal assessment, without reference to ability to pay, revenue enjoyed or property worth."³ But when the state constitution was adopted in 1777, and the poll tax was abolished, not only was a property tax inaugurated, but provision was made for the faculty tax by imposing an assessment of one-quarter of one per cent on the "amount received yearly" by "every person having any public office of profit, or an annuity or stipend," and on the "clear yearly profit" of "every person practising law or physic, every hired clerk acting without commission, every factor, agent or manager trading or using commerce in this state."⁴ In 1779 the tax was raised to two and a half per cent.⁵ But in the next year the whole system was abolished.

¹ Laws of the Government of New-castle, Kent and Sussex upon Delaware (Philadelphia, 1752), 234.

² American State Papers, Finance, I, 429.

³ Sketch of Tax Legislation in Maryland. Printed as an appendix to the Report of the Maryland Tax Commission, 1888, cxxix.

⁴ Maryland, Laws of 1777, ch. 22, secs. 5, 6.

⁵ Laws of 1779, ch. 35, sec. 48.

In South Carolina the faculty tax began earlier. We find that in 1701 a law was enacted which imposed a tax on the citizens according to their "estates, stocks and abilities, or the profits that any of them do make off or from any public office or employment." And two years later it was provided that individuals should be assessed on their "estates, goods, merchandizes, stocks, abilities, offices and places of profits of whatever kind or nature soever." This system continued throughout the century. The law of 1777, which was the first under the state constitution, phrased it a little differently by providing for a tax on "the profits of all faculties and professions, the clergy excepted, factorage, employments, handicrafts and trades throughout this state."¹ And Wolcott, in his report of 1796, describes the system as "founded on conjectural estimates, according to the best judgment of the collectors." These estimates were "understood to be very moderate." In Charleston, for instance, they were graduated according to the circumstances of individuals, from \$100 to \$5000.²

Finally, it may be said that in Virginia an attempt was made in 1786 to introduce the faculty tax, by assessing attorneys, merchants, physicians, surgeons and apothecaries. But the experiment lasted only four years. In 1790 the whole system was abolished.³

In addition to these cases of the taxation of profits as such, there were many cases in which, while the tax was imposed on property, the assessment was made on the basis of product. That is, it was deemed easier to ascertain the profits than the value of the property : the property was gauged by the revenue. Thus in Massachusetts in 1692 all estates real and personal were to be rated "at a quarter part of one year's value or income thereof." To make this clearer, it was provided in the following year that "all houses, warehouses, tanyards, orchards, pastures, meadows and lands, mills, cranes and wharffs be estimated at seven years' income as they are or may be let for ;

¹ Cooper, *Statutes at Large of South Carolina*, II, 36, 183; IV, 366.

² *American State Papers, Finance*, I, 435.

³ *Hening's Statutes*, XII, 283; XIII, 114.

which seven years' income is to be esteemed and reputed the value of craftman, for his income." From this time on until the Revolutionary period the valuation of real estate was computed on the income derived from it, but the number of years varied. From 1698 to 1700 the valuation was one year's income, but during most of the eighteenth century it was six years' income.¹

In Rhode Island the ratemakers were to "take a narrow inspection of the lands and meadows and so to judge of the yearly profit at their wisdom and discretion."² In New Hampshire the assessors were directed to take the estimated produce of the land as a basis; while houses, mills, wharves and ferries were valued at one-tenth or one-twelfth of their yearly net income, after deducting repairs.³ In New York it was customary to assess land according to its annual yield, even when other property was valued at a fixed sum. We find this as early as 1693, and frequently thereafter.⁴ Even as late as the middle of the eighteenth century the New York assessors for the general property tax took an oath to estimate the property by the product—a pound for every shilling.⁵ In Delaware, even after 1796, real estate was still valued according to the rents arising therefrom.⁶ Finally, in Virginia, although land was generally estimated at the presumed capital value, the yearly rent or income was sometimes utilized, especially in the towns, as a basis for estimating the value.⁷ Toward the close of the century we are told that the usual tax on city property was "five-sixths of one per cent of the ascertained or estimated yearly rent or income."⁸

¹ Acts and Resolves of the Province of Massachusetts Bay, I, 29, 92, 413.

² Colonial Records of Rhode Island, III, 300.

³ Acts of Jan. 2, 1772, and Feb. 22, 1794. Laws of the State of New Hampshire, passed at the General Court, 1793, 471.

⁴ Journal of N. Y., March 9, 1693. Cf. Act of September 29, 1709.

⁵ Oath of assessors, Law of 1743, sec. 13; in Van Schaack's Laws of New York from 1691 to 1773.

⁶ American State Papers, Finance, I, 429.

⁷ Act of 1793. Shepherd's Statutes at Large of Virginia, 1792--1806, I, 224.

⁸ American State Papers, Finance, I, 431.

III. *The Nineteenth Century.*

During the early decades of the nineteenth century not only did the faculty tax gradually fall into disuse, but with the increasing mobility of landed property, assessment according to selling value, instead of annual value or product, became universal. Let us trace further the history of the faculty tax.

In Vermont the old custom continued for several decades. In the consolidated act of 1825 certain classes liable to the faculty tax were to be assessed according to their gains, but with both a minimum and a maximum limit. For instance, attorneys, physicians and surgeons were listed at not less than \$10, nor more than \$300, "according to their respective gains." Merchants and traders were taxed at figures varying from \$15 to \$600, "in proportion to their several gains, taking into consideration the capital employed in said business." Mechanics and manufacturers were assessed up to \$100, "according to the best discretion and judgment of the listers." This survival of the old custom, however, worked very badly and produced much dissatisfaction. The act of 1841 dropped all reference to the faculty tax, and although by an act of the following year the tax was revived as to attorneys, physicians and surgeons, it was finally abolished in 1850 amid general jubilation.¹

In Connecticut the old custom continued, nominally at least, until the adoption of the new constitution in 1819. The revenue commission of 1887 described the old system as follows:²

Connecticut from her earliest history had followed the plan of taxing incomes rather than property. Those pursuing any trade or profession were assessed on an estimate of their annual gains. Real estate was rated not according to its value, but in proportion to the annual income which, on the average, it was deemed likely to produce. Land . . . was put in the list at a fixed rate for each kind . . . not because these sums were deemed to be the value of the

¹ Laws of Vermont, 1825, chap. ix; 1841, chap. xvi; 1842, chap. i; 1850, chap. xxxix, p. 28.

² Report of the Special Commission of Connecticut on Taxation, 1887, 9-10.

land, but because they were thought to represent the average income they would produce.

This "ancient system of income taxes," as it was called by the commission, came to an end in 1819, and was replaced by the plan of taxing property according to the modern methods.¹

In Rhode Island and New Hampshire, as we know, the old custom did not survive the eighteenth century. Massachusetts enjoys the distinction of being the only state in the Union in which the faculty tax has continued down to the present day. In preceding pages we traced its history to the law of 1777, which, as we saw, was virtually continued by the new constitution of 1780, and we saw the gradual process by which the term "faculty tax" was displaced both in popular usage and in legal parlance by "income tax." No change was made in the wording of the provisions until 1821, when an act was passed which included among the sums to be returned to the assessor

the amount of the income of such inhabitants from any profession, handicraft, trade or employment, or gained by trading at sea or on land, and also all other property of the several kinds returned in the last valuation, or liable to taxation by any law.²

This wording is repeated in the act of 1830,³ but in this act the term faculty is omitted; and it never reappears in later legislation. In the revised statutes of 1836 another change was made through the omission of the word "handicraft." The section reads as follows:

Personal property shall, for the purpose of taxation, be construed to include . . . income from any profession, trade or employment, or from an annuity, unless the capital of such annuity shall be taxed in this state.⁴

The next change came in the law of 1849,⁵ providing that

¹ Connecticut Session Laws of 1819, 338.

² General Laws of Massachusetts from the adoption of the Constitution to 1831 (3 vols.), vol. ii, laws of 1821, chap. 107, sec. 2.

³ Session Laws of 1830, chap. 86.

⁴ Revised Statutes, chap. 7, sec. 4.

⁵ Laws of 1849, chap. 149.

income from any profession, trade or employment, shall not be construed to be personal estate for the purpose of taxation, except such portion of said income as shall exceed the sum of six hundred dollars per annum ; provided, however, that no income shall be taxed which is derived from any property or estate which is the subject of taxation.

In 1866 the exemption was increased to one thousand dollars, and in 1873, as a result of a compromise with those who were attempting to have the law entirely repealed, to two thousand dollars.¹ This is still the law to-day.

In fixing the meaning of the law of 1849 it has been held by the court that the clause exempting incomes derived from property already taxed does not apply to the profits of merchants and others who employ such property in their business.² But the custom has arisen in Boston of exempting six per cent of the income as representing interest on capital, and of levying the tax only on the surplus profits. As a matter of fact incomes are taxed in only a very few places in the state, and on only a very few inhabitants of these places. An official commission tells us that "in a great majority of places the assessors make no mention whatever of income in their valuation lists," while "in others the tax is assessed only upon incomes derived from salaries and the learned professions."³ In one town of 14,000 inhabitants only thirteen persons were taxed on their incomes in 1874. The injustice of such a method is apparent when it is remembered that personal property itself is reached to only a very small extent. So that practically the burden falls chiefly on the salaried and professional classes. But the tax is so much of a farce that even this burden is very light. It is impossible to say anything definite about the proceeds, as the returns are included in those of the general property tax.

The only other state in which the faculty tax lasted until late in this century was South Carolina. In Delaware and Maryland, as we have seen, the tax disappeared before the close

¹ Laws of 1866, chap. 48 ; Laws of 1873, chap. 354.

² *Wilcox vs. Middlesex*, 103 Mass., 544 ; *cf.* *Collector vs. Day*, 11 Wall, 113.

³ Report of the [Mass.] Commissioners [on] Taxation and Exemption therefrom, 1875, p. 50.

of the last century. But in South Carolina we find the tax on "factorage, employments, faculties and professions" mentioned in each annual tax law until 1865.¹ In 1866 a far more comprehensive tax was imposed, in which incomes from "employments, faculties and professions" were included.² The context shows, however, that only the strictly professional classes could have been referred to by these words. But with the adoption of the new constitution in 1868, what is essentially the present method of taxation was introduced.

The faculty tax was also employed in local taxation in South Carolina for a considerable period. In 1809 an ordinance of the city of Charleston declared subject to taxation "all profit or increase arising from the pursuit of any faculty or profession, occupation, trade or employment." Clergymen, judges and schoolmasters or other teachers were exempt. The rate was one-third of one per cent.³ In 1844 the same words were used in a Charleston ordinance, except that "gross profit or gross income" took the place of "all profit or increase,"⁴ and mechanics also were made exempt.

Except in the two states of Massachusetts and South Carolina, thus, the old custom of assessing profits as an adjunct to the property tax had totally disappeared by the middle of the century. Moreover, the assessment of real estate according to profits had almost everywhere been supplanted by assessment on selling value. The only exception was Delaware. In that state yet to-day, it is provided that when houses or lots yield an annual rent, the owner shall be assessed for every \$12 of rent as for \$100 capital. In the case of ground rents, \$8 of rent is to be assessed for \$100 capital.⁵ In all other respects, however, lands are assessed as elsewhere on their selling value.

¹ Statutes at Large of South Carolina, XIII, 237.

² *Ibid.*, XIII, 367.

³ This ordinance is quoted in *City Council vs. Lee*, 3 Brevard, 226, decided in 1812, which held that public salaries were not included.

⁴ Quoted in *State vs. Elfe*, 3 Strobbart, 318.

⁵ Revised Statutes of Delaware, 1893, chap. 10, secs. 5 and 3, pp. 107-8.

IV. *Income Taxes Proper.*

Up to this point we have discussed the partial taxation of profits as a survival of the colonial faculty tax. But shortly before the middle of the present century a movement began in several of the states to secure greater equality in taxation. This movement, which originally bore some resemblance to the earlier attempts in the colonies, soon grew into something different. We reached, in short, the era of true income taxes. As their history has never been related, it may be profitable to consider the laws somewhat in detail. The three states to which attention is directed are Virginia, North Carolina and Alabama.

In Virginia the taxation of incomes dates back to 1843. In that year a law was enacted imposing what were technically known as a "tax on incomes," a "tax on fees" and a "tax on interest." The tax on incomes was a tax of one per cent on all incomes over \$400 "in consideration of the discharge of any office or employment in the service of the state, or of any corporation, company, firm or person." The income of ministers of the gospel and incomes from labor in mechanic arts, trades, handicrafts or manufactures were exempt. The "tax on fees," at the same rate, was imposed on attorneys, physicians, dentists, and "all other persons in respect to their fees above \$400, derived from any office, calling or profession." The "tax on interest" was at the rate of $2\frac{1}{2}$ per cent on all "interest or profit, whether arising from money loaned, or from bonds, notes or other securities for money or from bonds or certificates of debt of states or public corporations."¹ In other words, this was a tax on salaries and professional income, and a partial tax on funded income, with separate rates for temporary and for permanent income. In 1846 the "tax on interest" was reduced and made applicable only to profits over six hundred dollars.² In 1853 that part of the tax which applied to income from public securities was raised to $3\frac{1}{3}$ per cent. But by this law the tax on "incomes" and "fees" was graduated. Incomes below \$200 were exempt. On incomes from \$200 to \$250 the rate was one-

¹ Law of March 27, 1843; Acts 1842-43, 6-8.

² Law of Feb. 28, 1846; Acts 1845-46, 7.

quarter of one per cent ; and it rose by regular increments to one per cent on incomes of over \$1000.¹ After minor changes in 1856 and 1859 the tax was in 1863 practically converted into a general income tax, and it then received that appellation. Under the rubric "incomes and fees," all incomes from offices or employments, ministers of the gospel only being exempt, were taxed $2\frac{1}{2}$ per cent on the excess over \$500. Incomes from interest on public bonds were taxed 17 per cent. A new schedule, the "tax on profits," was established, under which a tax of 10 per cent was imposed on the net income in excess of \$3000 from all profits from the use of money from another, and profits from any trade, business or occupation. After an elaborate rearrangement of schedules and rates in 1866,² an act of 1870 abolished all schedules and imposed a general tax of $2\frac{1}{2}$ per cent on all incomes over \$1500. Incomes were defined as "all gains or profits from any source ;" and deductions were granted for losses by fire or shipwreck, losses incurred in trade, sums paid for fertilizers, labor or service, except the outlay for improvements, new buildings and betterments.³ After several reductions in the rate the present form of the tax was adopted in 1884. All incomes, except state salaries, are taxed one per cent. The limit of exemption is fixed at \$600, and deductions are permitted for losses incurred in trade, for taxes, rent and the expenses of cultivating land.⁴

Virginia is the only commonwealth in which the income tax figures as a separate source of state revenue. But the proceeds of the tax are insignificant, amounting in 1891-92 to \$54,154 out of a total revenue from direct taxes of almost two millions. About four-fifths of the tax was levied in seven or eight cities, almost one-half in Richmond alone.

In North Carolina the income tax dates from 1849. In that year a law was passed with the following preamble:

Whereas there are many wealthy citizens of this state who derive very considerable revenues from moneys which produce interest,

¹ Law of April 7, 1853 ; Acts 1852-53, chap. 8.

² Laws of February 28, 1866, and April 20, 1867.

³ Law of June 29, 1870, sec. 16 ; July 9, 1870, sec. 7.

⁴ Acts of 1883-84, chap. 450, Sched. D, secs. 10-11, 565.

dividends and profits, and who do not contribute a due proportion to the public exigencies of the same, be it resolved, *etc.*

The dissatisfaction here manifested led to a three per cent tax on all moneys at interest, on all profits from moneys invested in shares or trade, and on the salaries, practice and fees of physicians, lawyers and all others in excess of \$500.¹ The tax was popularly known as the "tax on salaries and fees," but in reality it formed an income tax on all commercial and precarious incomes. After some minor changes in 1851 and 1859 the tax was gradually transformed, until it became a tax on income from property not already taxed. This was due in part to the constitutional prohibition against levying an income tax on income from taxed property.² The law of 1874 permitted deductions not only for the amount derived from property taxed, but also for that derived from any trade, purchase or profession "taxed by the law of this state."³ This form of the tax is best seen in the law of 1879, which imposed a tax of one per cent on "the net incomes and profits, other than that derived from property taxed, from any source whatever." Net income was defined as the gross income after deducting taxes, rent, interest on incumbrances, repairs of buildings, ordinary expenses of the business from which the income was derived, and the necessary expenses of the family; but the total deductions could not exceed \$1000.⁴ The income tax was declared to include interest on national, commonwealth and foreign state securities. A number of minor modifications were made from time to time,⁵ and finally, in 1893, the principles of both progression and differentiation were introduced. In the case of gross profits and incomes derived from property not taxed the rate is now five per cent; on incomes from salaries and fees, one-half of one per cent on the excess over \$1000;⁶ on all other incomes (except from property already taxed) the rate is graduated from

¹ North Carolina, Acts of 1848-49, chap. 77, 129. Law of January 29, 1849.

² Const. of 1868, art. v, sec. 3; Const. of 1876, art. v, sec. 3.

³ Acts of 1873-74, chap. 133, sec. 9, par. 8.

⁴ Revenue Act, 1879, class ii, sec. 1.

⁵ Revenue Acts, 1881, class ii, sec. 1; 1885, sec. 7; 1889, Schedule A, sec. 5.

⁶ Revenue Act, 1893, Schedule A, sec. 5.

one-fourth of one per cent on those between \$1000 and \$5000, to two per cent on those over \$20,000.¹ Although the taxpayers are required by law to return their net incomes, with the sources from which they are derived, the tax is to a large extent a farce. The law is almost a dead letter.

Alabama also at one time had an income tax. It began, as in the other Southern states, as a tax on salaries and professional income. In 1849 the salaries and incomes of all public officers or officers of corporations were taxed one-half of one per cent; while lawyers, doctors and dentists who had practiced three years were required to pay either a specific tax of stated amount or one-half of one per cent on their incomes.² After the Civil War this tax was widened into a general income tax. The law of 1867 provided for a tax of one per cent "upon all annual gains, profits or incomes of every person residing in the state, from whatever sources derived, and upon salaries and fees of public officers, and upon salaries of all other persons." An exemption of \$500 was made in all cases. Deductions were allowed for taxes, rent or rental value of homestead occupied, income from dividends of corporations, expenses of business, and repairs.³ The law was supplemented by the acts of 1875 and 1876, which provided in general for the taxation of all salaries, gains, incomes and profits.⁴ The tax was nominally levied on both property and income; but the proceeds were so insignificant that it was abolished altogether in 1884.

V. *Conclusions.*

After this tedious review of the facts, let us attempt to ascertain exactly what they mean.

At the very outset the distinction between real and personal taxes must be borne in mind. A real tax is a tax on things; a personal tax is a tax on persons. A land tax, for instance,

¹ Revenue Act, 1895, Schedule A, sec. 5.

² Alabama Laws of 1849, no. 1. Cf. Code of 1852, par. 391, secs. 25, 26, 31.

³ Law of February 19, 1867, sec. 3. Cf. Rev. Code (1867), par. 435.

⁴ Law of March 19, 1875, sec. 11; March 6, 1876, sec. 4.

whether it be levied on property or on produce, is a tax on the land — on the thing itself, a real tax. No attention is paid to the personal condition of the landowner; the government looks to the land itself, as in the case of a tax on houses or a tax on tangible personalty. The objective point is the thing rather than the person. Of course it is always the person, the individual, who is under obligation to pay taxes to the state. But the endeavor to assess the individual as such has always met with great difficulty, and many governments have therefore had recourse to the various pieces of property rather than to the person. The steps in this development are interesting.

In the beginning, when the conception of taxable capacity first forced itself through, as in the early mediæval towns, we find the general property tax. In all early communities, and especially under the feudal system, land is very rarely sold. We accordingly find the earliest land taxes to be taxes on gross produce. The ability of the farmer is measured by the produce of the land, the ability of the land-owner by the rental from the land. Thus the land taxes in early mediæval Europe were taxes on produce or rents. In the more democratic communities, like those of Switzerland, the land tax soon became a tax on the selling value. In the other European countries this transformation was effected a little later, but it was quite general; and everywhere the tax was a tax on the actual value. Only in relatively recent times has it been deemed possible in most of the European states to get more closely at the taxable capacity of the land by a careful estimate of its actual yield. On the greater part of the continent of Europe to-day the land taxes are again assessed on the basis of the yield, but now on net yield, and detailed surveys and valuations are made in order to determine this precisely.

In America the development was very much the same. At the outset, when land was not bought and sold readily, the tax was assessed more or less arbitrarily, either according to the quality of the land or according to its assumed produce. In only a few cases was the still more primitive method pursued of taxing land simply by quantity. But all

these taxes were real taxes; they were taxes on the thing itself, on the land, not on the income of the landowner. When in the course of time transfers of land began to be more frequent, these produce taxes turned into taxes on the actual or selling value, as is the case everywhere to-day throughout the United States. This plan, with the democratic methods of assessment, is supposed to furnish a sufficiently close approach to the truth. We make no attempt, as a rule, to ascertain the exact produce of each parcel of land as a basis for the tax. But whether we assess land upon its produce or upon its value, is immaterial; the tax is on the thing itself.

In addition to this land tax, we find in all partly developed communities a tax upon personalty also. In so far as most of the personalty is visible and tangible, the natural basis of assessment is its actual or selling value. This basis was used in all the mediæval taxes as well as in the American colonies. But it was very soon recognized that property alone, whether in land or in personalty, was not an adequate measure of taxable capacity. Revenue is derived from other sources than from property. Hence it was that an attempt was made to supplement the property tax by a faculty tax upon persons that derived revenue from these other sources. The tax on earnings was supposed to correspond to the property or produce tax on special pieces of personalty or realty. It was not an income tax in the modern sense. By an income tax we mean a tax upon the personal income of the individual. It is a personal tax, not a tax on things, not a real tax. Allowance is made for indebtedness and for other elements affecting the personal situation of the taxpayer. But this faculty tax, as it was called in mediæval Europe as well as in colonial America, was not levied on the total income of the individual. It was a tax not on actual profits, but on assumed profits. Just as articles of personal property were put down on the lists at fixed rates; just as plots of land were set down at sums supposed to represent their capitalized annual produce: so the individuals subject to the faculty tax were not required to make returns of their earnings, but were assessed by the listers at fixed amounts.

As we have seen more specifically in the cases of Connecticut and South Carolina — and the same was true in the other colonies — the faculty tax was nothing but a classified product tax, in which different employments and different classes within each employment were rated at fixed amounts. It was precisely for this reason that the faculty tax, which at the outset gave satisfaction, soon became antiquated and unjust. Instead of being a tax on actual profits or gains as a part of a general tax on incomes, in which attention might be paid to the individual situation of the taxpayer, it was nothing but an arbitrarily-levied class-tax on certain assumed earnings. It bore very little relation to the actual income; it became grievous and unequal; and it was therefore allowed to fall into disuse. It never was an income tax in the modern sense.

On the other hand, the state income taxes of this century, with the exception of that of Massachusetts, which is simply a survival of the old faculty tax, have been true income taxes. They have not been confined to the assumed gross profits of certain particular classes, but have been levied on the actual total income of the taxpayer. The difference between the colonial taxes on profits and the state income taxes is very much like that between the European taxes on product and the income taxes. In Germany, in France and in many other countries, after the general property tax had been abandoned, and after it had been recognized that net product was in some respects a better index of taxable capacity than property, the whole tax system was changed into one on product: that is, first we had the land tax, which was levied on net produce; then came the buildings tax, levied on the rental value of buildings; then came the tax on capital, according to the yield of capital; then came the tax on business, in which the assumed profits were calculated according to the outward signs. All these were taxes on things — on the land, on the house, on the business, on the capital; and finally, to round out the system, there was sometimes imposed a tax on the remaining source of profit, that is, the professions and employments which yield a produce in the shape of a salary or compensation. These taxes are still

to-day known as real taxes (*impôts réels*), or produce taxes (*Ertrags-Steuern*). It is only within a comparatively recent period that product has come to be recognized as a less satisfactory theoretical basis of taxation than income. Product looks at the thing that produces; income looks at the person that receives. In the first case, no allowance is made for debts or other qualifying circumstances; in the second, such allowance is possible. As a consequence, modern income taxes have been imposed partly in the place of, and partly in addition to, these produce taxes. The system of real taxes is being supplanted by that of personal taxes. Or, if we will use the term income, the first class of taxes may be called indirect income taxes, because the income of the individual is only indirectly reached; while the new and more general taxes are direct income taxes, and have the characteristics of a personal, not a real tax.

This is not the place to enter upon the discussion as to what was meant by the term direct tax in the Constitution of the United States, and whether it included this faculty tax—the only form of profits taxation then known in America. If there is any value in the above exposition, however, it is plain that the profits taxes of the American colonies were not direct income taxes, and that in so far as they are called income taxes at all, they must be classed as indirect income taxes. It is very remarkable that in all the legal briefs and arguments presented to the supreme court in connection with the recent income-tax cases no reference was made to the statement of Oliver Wolcott, the secretary of the treasury who in 1796 drew up the celebrated report on direct taxes in the states. Wolcott was thoroughly familiar with all the details of the laws, and in his enumeration of the various taxes imposed he described the faculty tax in the following words:

4th. *Taxes on the profits resulting from certain employments.* This head will comprise a variety of taxes collected in certain of the states upon lawyers, physicians and other professions, upon merchants, traders and mechanics, and upon mills, furnaces and other manufactories. In some states these taxes are attempted to be proportioned

to the gains and profits of individuals, in which cases they are both arbitrary and unequal; in other states the taxes are uniform, in which cases they are only unequal.

It is presumed that taxes of this nature cannot be considered as of that description which the constitution requires to be apportioned among the states. . . . It is impossible to render them exactly equal; that they are easy of collection, that their operation is indirect, and that they are capable of being rendered perfectly certain, are recommendations in their favor.¹

Oliver Wolcott clearly saw, as he expressed it, that the operation of these taxes was indirect, and, with a full knowledge of everything that had been said on the subject in every state, he came to the conclusion that they were not direct taxes in the contemplation of the Constitution. The points which I desire to emphasize here are that these faculty taxes were not direct income taxes at all; that they were simply an addendum to the early land taxes, originally levied on product; and that with the change of the taxes on product into taxes on property these faculty taxes gradually fell into disuse. To call them income taxes is a misnomer. Income taxes in the modern sense were levied for the first time in England in 1799, and it was at a considerably later period that they spread to other countries. To claim, then, that our colonial taxes on faculty were income taxes, betrays a confusion of thought and an ignorance of economic distinctions. The faculty tax had its origin in the same motives that have led to the introduction of modern income taxes, but it was not an income tax; just as the French land tax and the German *Lohnsteuer* of to-day, levied on the produce of land and of industry respectively, are not income taxes.

The distinction between real taxes, or taxes on product, on the one hand, and personal taxes, or taxes on income, on the other hand, is one of fundamental importance in the science of finance. To disregard it can only produce confusion. To observe it will enable us to explain what is otherwise inexplicable in American economic history.

EDWIN R. A. SELIGMAN.

¹ American State Papers, Finance, I, 439.

IS THE SENATE UNFAIRLY CONSTITUTED?

THE inequality of representation in the Senate, always a subject more or less disturbing to logical minds, has been pushed into peculiar prominence of late by the contests over the silver and tariff questions, the admission of Utah, and the proposed admission of Arizona, New Mexico and Oklahoma as states. Much has been heard about the unfairness of permitting Nevada, with 45,000 inhabitants, to balance the vote of New York, with 6,000,000. The discussion of this question may seem a purely academic matter, since no state can be deprived of its equal representation in the Senate without its own consent ; but there are various ways in which really flagrant injustice could be corrected. For instance, a constitutional amendment might be adopted, providing that no state should be admitted until it had consented to be satisfied with one senator so long as its population remained under 500,000 ; or, the most populous of the present states might be divided to reduce the discrepancies ; or the number of senators might be reduced to one from each state, and disagreements between the two houses settled by votes in joint convention. The last plan would have advantages of its own, regardless of the merits of the question at present under discussion.

But before anything is done, the public must understand the precise nature of the evils it is proposed to cure. That the influence of the Senate is apt to be pernicious, is unpleasantly obvious ; that the body has become intensely unpopular, is equally true : but the question is, whether these unfortunate facts are due in any degree to the ratio of representation, or whether they must be accounted for on other grounds. It may be on its face a glaring injustice that a combination of the senators from twenty-three states, with a population of 12,401,748, should be able to outvote twenty-one states, with a population of 49,507,158 ; but the question is whether such a combination

ever did or ever could exist. The twenty-three states are situated on the Atlantic, Pacific and Gulf coasts, on the Canadian frontier, among the Rocky and Alleghany mountains and in the Great Basin and the Mississippi valley. Can any issue ever arise which will unite Vermont, Delaware, Florida and Nevada against Massachusetts, Virginia, Georgia and Kansas?

In considering this question I have thought it interesting to examine the records and see what has been our actual experience. I have analyzed the votes in the Senate on a number of the most hotly contested issues that have divided Congress since the foundation of our government, in order to discover whether any line of division between large and small states can be traced, and whether the system of representation in the Senate has had the practical effect of putting that body under the control of popular minorities. This analysis falls a little short of absolute accuracy in one respect, since the early records take no account of pairs. Where only one of a state's Senators is recorded as voting on a question I have counted the state on his side, while it is possible that his colleague may have been paired on the other side, and that therefore the vote of the state should be put down as divided. Such cases, however, are not very common, and doubtless such errors are as a rule so distributed as to offset each other. In all divisions since the Civil War the pairs are included and the results are exact. The votes selected as affording a fair test of the relations of the Senate to the majority of the nation are those on the Alien and Sedition Laws, 1798, the Embargo, 1807, the declaration of war against England, 1812, the incorporation of the Bank of the United States, 1816, the tariff of 1816, the Missouri Compromise, 1820, the tariff of 1824, the tariff of 1828, the renewal of the United States Bank charter, 1832, the establishment of the Independent Treasury, 1840, the attempted reestablishment of the Bank of the United States, 1841, the tariff of 1842, the annexation of Texas, 1845, the tariff of 1846, the fugitive Slave Law, 1850, the Kansas-Nebraska Law, 1854, the Bland-Allison Silver Law, 1878, the substitution of the Republican tariff bill for the Mills Bill, 1889, the McKinley Law,

1890, the abandonment of the Federal Elections Bill, 1891, and the repeal of the silver-purchase clause of the Sherman Silver Law, 1893. The war and reconstruction periods are passed over, because during those times the representation of the states was not complete. The figures of population are taken in each case from the census next preceding the vote, unless a new census came in the same or the following year.

The Alien Law passed the Senate June 8, 1798, by a vote of 16 to 7. The only state that cast a divided vote was North Carolina, with a population of 393,751. On the affirmative side were ranged the states of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware and South Carolina. On the negative were Virginia, Georgia, Kentucky and Tennessee. The eleven states voting in the affirmative had an aggregate population of 2,595,955, or an average of 235,996 each. The four states in the negative had an aggregate population of 939,526, or an average of 234,881 each. The two most populous states voted on opposite sides, and so did the two least populous. The first and the last state in rank acted together. The most populous state had twenty-one times as many inhabitants as the least populous, but the various discrepancies so nicely balanced each other that the average population of all the states on one side of the question and that of all those on the other differed by only 1,115.

The Sedition Law passed the Senate July 4, 1798, by a vote of 18 to 6. Maryland and New Hampshire, with a total population of 461,613 and an average of 230,806, were divided; Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, North Carolina and South Carolina, with a total population of 2,093,720, and an average of 232,635, voted in the affirmative; and Virginia, Kentucky and Tennessee, with 856,978 inhabitants in all and an average population of 285,659, voted in the negative.

To save space and the patience of the reader the catalogue of states in the remaining divisions may be omitted, and the net results reduced to tabular form.

	DIVIDED.	Ave.	No.
Embargo (Dec. 18, 1807).			
States	3	12	2
Total population	1,339,615	3,625,009	315,275
Average population	446,538	302,084	157,637
Declaration of War (June 17, 1812).			
States	5	■	4
Total population	2,500,362	3,893,872	632,307
Average population	500,072	486,734	158,077
Bank incorporation (April 3, 1816).			
States	9	7	2
Total population	3,180,739	2,858,859	1,173,509
Average population	353,415	408,408	586,754
Tariff, 1816 (April 19, 1816).			
States	3	13	2
Total population	1,889,805	4,287,246	936,046
Average population	629,935	329,788	468,023
Missouri Compromise (Feb. 16, 1820).¹			
States	1	11	10
Total population	147,178	4,293,361	4,512,398
Average population	147,178	390,305	451,240
Tariff of 1824 (May 13, 1824).			
States	2	12	10
Total population	1,616,113	4,074,429	3,907,201
Average population	808,056	339,535	390,720
Tariff of 1828 (May 13, 1828).			
States	■	11	9
Total population	1,181,868	4,695,234	3,700,661
Average population	295,467	426,839	411,184
Bank Charter renewal (June 9, 1832).			
States	5	11	8
Total population	1,555,140	5,054,083	6,115,884
Average population	311,028	459,462	764,485
Independent Treasury (Jan. 17, 1840).			
States	6	11	7
Total population	2,963,441	9,925,202	3,550,373
Average population	493,907	902,291	507,196

¹ Division on the amendment reported by the judiciary committee adding the bill for the admission of Missouri to that for the admission of Maine.

	DIVIDED.	AYR.	No.
Reëstablishing U. S. Bank. Passage of bill over veto, Aug. 19, 1841).			
States	7	10	9
Total population	5,022,651	4,723,160	7,145,296
Average population	717,521	472,316	792,921
Tariff of 1842 (Aug. 27, 1842).			
States	2	11	12
Total population	388,063	8,196,902	7,476,932
Average population	194,031	745,173	623,077
Annexation of Texas (Feb. 26, 1845).			
States	7	10	9
Total population	3,764,878	8,474,959	4,650,970
Average population	537,839	847,496	516,774
Tariff of 1846 (July 28, 1846).			
States	6	11	10
Total population	4,449,290	6,666,738	5,627,145
Average population	741,548	606,067	562,714
Fugitive Slave Law (Aug. 21, 1850).			
States	1	16	9
Total population	2,311,786	9,340,540	5,556,207
Average population	2,311,786	583,783	617,356
Kansas-Nebraska Law (May 25, 1854).			
States	2	21	8
Total population	1,373,509	14,160,388	7,013,994
Average population	686,754	674,304	876,749
Bland-Allison Silver Law (Feb. 15, 1878).			
States	8	21	8
Total population	5,494,694	22,979,552	8,781,484
Average population	686,836	1,094,264	1,097,685
Substitution of Republican Tariff for Mills Bill (Jan. 22, 1889).			
States	3	18	17
Total population	6,536,426	30,035,186	24,199,128
Average population	2,178,808	1,668,621	1,423,478

	DIVIDED.	AYE.	NO.
McKinley Law (Sept. 10, 1890).			
States	3	22	17
Total population	5,048,939	30,896,103	25,686,615
Average population	1,682,979	1,404,368	1,510,977
Sidetracking Federal Elections Bill (Jan. 22, 1891).			
States	5	19 ¹	19
Total population	11,827,745	27,362,704	22,728,457
Average population	2,365,549	1,403,215	1,196,234
Repeal of Silver-Purchase Law (Oct. 30, 1893).			
States	8	21	15
Total population	15,836,129	32,331,452	13,741,335
Average population	1,979,516	1,539,593	916,089

An examination of these tables discloses the fact that, while the most populous state in the Union now has 133 times as many inhabitants as the least populous, the votes on practical questions have been so balanced that in all the twenty-one cases cited there has been only one instance in which the average population of the states ranged on one side has been as much as twice that of the states ranged on the other. In most cases the balance has been quite as even as it would have been with Congressional districts. There is the further interesting fact, which I have not been able to bring out in the tables, that in every case, without exception, the small states have been divided. There is no trace anywhere of that combination of small states against large which is thought to portend danger to our political system. In the latest case analyzed, and the one which has excited the warmest discussion—the vote on the repeal of the Silver Purchase Law—we have Wyoming, Delaware, Rhode Island, New Hampshire, Vermont and Washington on one side, and Nevada, Idaho, Montana, North Dakota, South Dakota and Florida on the other, with Oregon divided. These were the only states

¹ One senator absent and not paired.

having less than 400,000 inhabitants each, and the division among them could hardly have been more even.

Further light upon the principle of equal representation by states may be gained by studying the history of presidential elections. An examination of the records from the beginning shows that if each state had been allowed only one vote, and had cast that vote in accordance with the action really taken by the majority of its electors, the result would have been precisely what it actually was, with but two exceptions, namely, in the election of 1848, when there would have been a tie instead of a majority for Taylor, and in that of 1880, when there would have been another tie, instead of a majority for Garfield. The latter contest beautifully illustrates the harmonious balance of large and small states in our political system. Nineteen states voted for Garfield and nineteen for Hancock—a result most accurately adjusted to the popular vote—4,449,053 on one side and 4,442,035 on the other.

The fact that several states which happen for the moment to be of small population are situated west of the Missouri River has given the question of senatorial representation a sectional aspect, heightened by the contrast of extreme examples, such as New York and Nevada. It is obvious, however, that since the practical grievance is not single votes but possible control by minorities, no comparison is fair that does not include great groups of states. If we start at the Pacific coast and go eastward until we have taken in half the states in the Union, we find that the twenty-two so included had an aggregate population at the last census of 25,738,747, or an average of 1,169,943 each. The total population of the remaining twenty-two was 36,170,159, and the average 1,644,098. Here is certainly a discrepancy, but one no greater than exists among Congressional and legislative districts in many states. Moreover it is one that is rapidly disappearing with the growth of the West. All of the Western States are immense in area, and almost all are well adapted to support a dense population. The real grievance of the future will be, not that of New York and Pennsylvania against Nevada and Wyoming, but that of

Texas, California, Oregon and Washington against Rhode Island, Delaware, New Hampshire and Vermont.

There is still less ground for present complaints of inequality in representation as between the North and the South. If we draw a line from the Atlantic to the Pacific in such a way that half of the states lie on one side and half on the other, we find that the northern group contains an aggregate population of 33,627,144 and an average of 1,528,506 to each state, while the aggregate of the southern group is 28,281,762 and the average 1,285,534. The approximation to equality becomes even closer if we take a natural instead of an arbitrary line of division. On such a division the twenty-eight states commonly called Northern are found to average 1,421,112, and the sixteen states commonly called Southern 1,388,610 inhabitants each.

There remains another point which is usually overlooked. Each state is commonly regarded as a unit, and therefore, when the senators from New York are outvoted, it is assumed that the wishes of 6,000,000 people are disregarded. But the truth is, of course, that the lines of political cleavage run across state boundaries. It is not the population of a state, therefore, but the size of its popular majority, that determines the moral weight of its support of one policy or another. In 1884, for instance, New York cast 1,171,312 votes for president, and Nevada only 12,771. But in New York the votes of 562,001 Democrats were canceled by those of 562,001 Republicans, while those of 25,001 Prohibitionists, 17,002 Greenbackers and 4,260 unassorted citizens were wholly lost. The thirty-six electoral votes of the state were given to Cleveland by 1,047 men who furnished the Democratic plurality, and if 524 of these had voted the other way, all the thirty-six electors would have gone to Blaine. In Nevada, on the other hand, there was a net Republican majority of 1,615, which was sufficient to cancel the Democratic plurality in New York, with 568 votes to spare. If there had been no states in the Union but these two, there would have been 569,194 popular and three electoral votes for Blaine, against 568,626 popular and thirty-six electoral votes for Cleveland. The 562,001 Republican voters

of New York would have had no representatives in the Electoral College except the three electors from Nevada. Certainly neither Democrats nor Republicans in New York could complain of Nevada's over-representation.

Again, in 1890 New York cast two votes in the Senate in favor of the McKinley Bill, and Florida two against it. Here, apparently, the wishes of 6,000,000 people were neutralized by those of less than 400,000. But the actual fact was that, instead of representing the wishes of 6,000,000 people, the New York senators did not represent a net preponderance of even one voter in their own state. On the contrary, the election held two months later showed that there was a majority of nearly 100,000 against them. The Florida senators, in fact, represented a majority of New Yorkers.

These examples of compensation meet us at every turn. Whenever we look at one point we see injustice, but under a comprehensive view all the minor inequalities are absorbed in a wider justice. There are flagrant defects in the constitution of the Senate, but, so far as present practical conditions are concerned, they do not lie in the ratio of representation. The real weak point is the irresponsibility and consequent infidelity of the individual senators. If each senator were truly representative of his own state, the relative power of the states could safely be left to take care of itself. It was not the "rotten boroughs" that brought reproach upon the Senate during the recent tariff wrangle, but the senators from the great states of New York, New Jersey, Ohio and Maryland. What is needed to prevent a recurrence of such scandals is to make senators continuously and effectively responsible to their constituents, by depriving the legislatures of the power of election and giving the people power to recall unfaithful senators.

S. E. MOFFETT.

SAN FRANCISCO, CAL.

KOSSUTH: A SKETCH OF A REVOLUTIONIST. II.

VII. *Kossuth's Escape.*

THE sympathy manifested by the people of England with the Hungarian cause, especially after the Russian intervention, confirmed Lord Palmerston in his solicitude in regard to what was taking place in the East. On the first of August, 1849, he instructed Lord Ponsonby to inquire whether any arrangements were contemplated, in the event of the termination of the war, which would be at variance with the provisions of the Treaty of Vienna touching the balance of power in Europe, and also to make known to the Austrian government that he was authorized to exercise his good offices between that government and Hungary, if the intervention of a third power might in any respect be acceptable. Lord Ponsonby was further directed to call attention to certain proclamations that had been issued at Pest by the Austrian General Haynau, in which it was declared that the penalty of summary execution would be visited on every one who should by word or deed aid, support or participate in the cause of the rebels, or insult the Austrian or Russian soldiers. These instructions were brought to the notice of Prince Schwartzenberg on the day after Görgei's surrender. The manner in which they were received may, without entering into details, be inferred from Lord Ponsonby's statement that when he spoke of General Haynau's proclamation, the prince, "in very civil terms," told him "that the Austrians were the best judges of their own affairs."

It was not characteristic of Lord Palmerston, however, to abandon a line of policy merely because it proved to be ungrateful to those whom it affected. Nor did his interest in the Hungarian question abate with the downfall of the revolution. The conquered country was divided into military districts, and General Haynau pursued a policy of great severity. A large number of Hungarian officers were executed, though a general

amnesty was proclaimed as to the army from sergeants downwards. Count Louis Batthyányi was sentenced to be hanged; after attempting to commit suicide, however, he was shot. Palmerston, moved by Haynau's proceedings, instructed Lord Ponsonby to urge upon the Austrian government — and he caused a similar representation to be made to Russia — a concession to the national feelings of the Hungarians. Again his advice was repulsed. The world, Prince Schwartzenberg declared, was agitated by a spirit of subversion. England had not been free from it, as was shown by the case of Canada, of the island of Cephallonia, and, last of all, of "unhappy Ireland." But whenever revolt sprang up anywhere within the vast limits of the British Empire, the English government always maintained its authority "even at the cost of torrents of blood." It did not lie with Austria, said the prince, to censure. Whatever the opinion she might have formed of insurrectionary movements in the British Empire, as well as of the means employed by the British government to strangle them, she thought it her duty to abstain from making that opinion known. By such conduct she thought she had acquired the right to expect of Lord Palmerston in that regard entire reciprocity.¹

But a more serious question now arose. A large number of Hungarian and Polish refugees, including Kossuth, Dembinski, Bem, Perczel and other leaders in the revolution, escaped into Wallachia and stopped at Orsova, where they were hospitably received by the Turkish authorities. They were subsequently escorted to the fortress of Widdin, to await the Porte's decision as to their ultimate disposition. In the latter part of August the Austrian and Russian ambassadors at Constantinople peremptorily demanded of the Porte the extradition of these refugees, Austria claiming the Hungarians and Russia the Poles. By the treaty between Austria and Turkey

¹ It may be mentioned as a coincidence, that language almost precisely similar to that of Prince Schwartzenberg had been used by the Duke of Sotomayor, the Spanish minister of state, in his then recent dismissal of Sir Henry Bulwer, the British minister at Madrid, for offering, under Palmerston's instructions, some advice as to the manner in which the government of Her Catholic Majesty should be conducted.

concluded at Belgrade, September 10, 1739, it was provided that neither of the contracting parties should give asylum or shelter to rebels or malcontents, but that each of them should, on the other hand, punish all such persons, as well as all robbers and brigands, whom it might find within its dominions, of whichever party they might be the subjects. By the treaty between Russia and Turkey concluded at Kainardji, July 21, 1774, it was provided that if subjects of either party, having committed a capital crime or rendered themselves guilty of disloyalty or treason, should seek asylum in the territory of the other, they should be neither received nor protected, but should immediately be delivered up or else driven from the country. Such were the stipulations of the treaties. Neither treaty explicitly required the surrender of the fugitives: the treaty with Russia presented the alternative of extradition or expulsion.¹ The ambassadors, however, energetically pressed the demands of their governments, and finally, having urged upon the Porte, but without success, immediate compliance, they broke off diplomatic relations. Bem and fifteen of his Polish companions, appreciating the gravity of the situation, sought to assure themselves of the Porte's protection by embracing the Mohammedan religion.

It is not probable that Austria and Russia at any time contemplated extreme measures to enforce compliance with their demands. Indeed, early in October Prince Schwartzenberg assured Lord Ponsonby that the rupture of diplomatic relations would not be attended on the part of Austria with a worse consequence than the expression of dissatisfaction. Nevertheless, if the Porte, which was without such an assurance, had been left to face the situation alone, the course of our narrative might have been different. But support was not wanting. From the moment the demands for extradition were made, Stratford Canning, seconded by General Aupick, the French minister at Constantinople, labored to place the Porte in an

¹ One of the charges made against Kossuth was the "larceny" of the crown jewels and other royal insignia of Hungary, which disappeared from Arad at the time of his flight and were found at Orsova.

attitude of firm resistance; and on the first of October it requested through its ambassador at London the moral, and if necessary the material, support of Great Britain. On the 6th, two days before Lord Ponsonby's report of his interview with Prince Schwartzenberg was received, Palmerston informed Canning that Her Majesty's government, having been appealed to by the Porte, could not hesitate to comply with its request. On the same day he instructed Lord Ponsonby, at Vienna, and Lord Bloomfield, at St. Petersburg, to say to the Austrian and Russian governments that, as Turkey was not obliged by treaty to surrender the refugees, she was not called upon to deliver them up. In a passage that has often been quoted Palmerston said:

If there is one rule which more than another has been observed in modern times by all independent states, it is the rule not to deliver up political refugees, unless the state is bound to do so by the positive obligations of a treaty. . . . The laws of hospitality, the dictates of humanity, the general feelings of mankind, forbid such surrenders; and any independent government which of its own free will were to make such a surrender would be deservedly and universally stigmatized as degraded and dishonored.

His lordship admitted, however, that the Sultan was bound to prevent the refugees from hovering on either the Hungarian or the Transylvanian frontier, and ought to require them either to leave Turkish territory or to take up their residence somewhere in the interior.

At the same time Vice-Admiral Sir William Parker, commander-in-chief of Her Majesty's naval forces at Malta, was ordered with his squadron to the neighborhood of the Dardanelles, in order that he might be able to proceed to Constantinople, if he should be invited to do so by the Sultan through Her Majesty's ambassador at Constantinople. The French government, acting in concert, ordered its naval forces in the Mediterranean to put to sea and, bearing up toward Malta, to enter into communication with the British admiral.

But the warlike aspect of affairs was soon modified. The peaceful assurance given by Prince Schwartzenberg to Lord

Ponsonby was soon followed by a similar expression on the part of Russia, and a communication was made by the Russian government to the Porte, in which only the expulsion of the refugees was insisted on. The greater part of the Hungarian refugees at Widdin accepted from the Austrian government an offer of amnesty. The more distinguished of their number were not, however, included in the offer, and these, together with the Poles, were removed to Shumla. Subsequently fifty-four of the refugees, among whom was Kossuth, were transferred to Kutaiah, where the Porte engaged to detain them till there should no longer be anything to apprehend from their liberation.

The government of the United States now reappears upon the scene. When Mr. Stiles, the American *chargé d'affaires* at Vienna, reported his attempt in December, 1848, to use his good offices between Austria and Hungary, Mr. Buchanan, who was then secretary of state, expressed a guarded approval. While, he said, the foreign policy of the United States "must ever be governed by the wise maxim not to interfere with the domestic concerns of foreign nations," Mr. Stiles, in endeavoring merely "to open the door of reconciliation between the opposing parties, leaving them to adjust their differences without his intervention," did not appear to have departed from that policy; and if he had acted otherwise, he might have been "charged with a want of humanity." In the course of a few months the language and conduct of the government underwent so considerable a change that it would not have been discreditable to eminent statesmen to suppose that they considered the maxim expressed by Mr. Buchanan to be of doubtful wisdom. Such a supposition, however, would not have been well founded in all, or even in many, cases. If it is an evidence of political skill to find out what the people want and then to go before them in doing it, it must be conceded to be high art to conceal any sense of reluctance under the guise of a bold and enthusiastic leadership. But the clamor of popular excitement is not always to be accepted as the voice of the people. The interest felt in the United States in the Hungarian revo-

lution doubtless was widespread and sincere. It was greatly intensified when news came of the declaration of Hungarian independence; for, although this declaration left the question of a permanent form of government wholly in abeyance, it was immediately interpreted in the United States as the forerunner of a republic. It was only natural, therefore, that the American people, conscious of their own origin and condition, should be outspoken and demonstrative in their expressions of sympathy with the Hungarian movement. That a considerable proportion of them expected or desired any departure by the government from its established policy of non-intervention, by no means follows. The popular agitation was, however, of so marked and unusual a character as to invest even the wildest suggestion with an apparent political importance.

Early in June, 1849, a Hungarian in the city of New York, who had lived in America for two years, wrote a letter to President Taylor and enclosed with it a printed report of the proceedings at a meeting of "a small number of Hungarians" in that city, at which the writer of the letter had suggested that a petition be addressed to the president, requesting him to consider the propriety of sending a diplomatic representative to the Hungarian government. The writer stated that his countrymen, being perhaps "less experienced" than himself, had not been sufficiently impressed with the urgency of the petition, and he had concluded to present it himself, in the flattering hope that it would be successful. It seems that before the reception of this letter the proceedings in question "had not escaped attention" at Washington.

On the 18th of June Mr. A. Dudley Mann was appointed by the president "special and confidential agent of the United States to Hungary," and was invested with full power to conclude treaties concerning all matters of interest "to both nations." But, as the independence of Hungary had been neither established nor recognized, Mr. Mann was instructed first to proceed to Vienna, and to confer with Mr. Stiles upon the subject of his mission and upon "the best method of accomplishing its objects secretly and with despatch." The principal

object, Mr. Mann was told, that the president had in view, was "to obtain minute and reliable information in regard to Hungary, in connection with the affairs of adjoining countries," the "probable issue" of the "revolutionary movements," and the chances of "forming commercial arrangements" with Hungary "favorable to the United States." The struggle between Austria and Hungary, and the interference of Russia in the conflict, had, it was said, awakened "the most painful solicitude in the minds of Americans." Without departing from its "established policy of non-interference in the domestic concerns of other nations," the United States desired, if it should appear that Hungary was "able to maintain the independence she had declared," to be "the very first to congratulate her, and to hail with a hearty welcome her entrance into the family of nations." For the present, it was feared that the prospect of such an event was gloomy; and Mr. Mann was instructed that circumstances might be such as to make it safer for him not to proceed to Hungary at all. Of this, he was to be the judge. The "best wishes" of the United States attended Hungary. A policy of "immobility, backed by the bayonet," had opposed the efforts of the "illustrious man," Kossuth, to effect reforms and ameliorate the condition of his countrymen. To the contemplation of American statesmen, Hungary offered "the interesting spectacle of a great people rising superior to the enormous oppression" that had "so long weighed her down." The president, as had been said, desired "to obtain information in regard to Hungary, and her resources and prospects, with a view to an early recognition of her independence, and the formation of commercial relations with her." The president, inspired with "great confidence" in Mr. Mann's opinions, felt "no reluctance in leaving these delicate and important duties almost wholly to his discretion and prudence." He should decide on his own movements, on the proper mode of approaching Kossuth and his confidential advisers, and on the communications which he might deem it proper to make to them on the part of his government. These instructions were signed by Mr. Clayton, as

secretary of state. Such powers as they conferred on Mr. Mann had never before and have not since been confided to any representative of the United States ; and in later years, when civil war was raging in the United States and the national government was protesting against the concession by foreign powers of belligerent rights to the Confederate States, the Austrian government did not fail to recall the mission of Mr. Mann to Hungary.

When Mr. Mann arrived in Vienna, the Hungarian revolution was practically at an end, and he did not tarry in the Austrian capital. Subsequently, however, the fact of his mission as well as the character of his instructions became known, and the Chevalier Hülsemann, the imperial *chargé d'affaires* at Washington, was directed to make a confidential protest against the proceeding. Mr. Hülsemann's representations were met with the explanation that the only object of Mr. Mann's mission was to obtain information by personal observation. With this explanation, though it seemed to give a narrow interpretation to the mission, the Austrian government rested till Mr. Mann's instructions were communicated to Congress. Mr. Hülsemann was then directed, in view of the publication of the document, to enter a formal protest.

When this protest was presented President Taylor was dead, and Mr. Webster had succeeded Mr. Clayton as secretary of state. Mr. Webster's reply is generally known simply as the "Hülsemann Letter."¹ This fact sufficiently attests its popular reception as an overwhelming answer to Mr. Hülsemann's protest. It must, however, be admitted that the conditions were very favorable to such a reception, and it may be fortunate for the reputation of the note that the general impressions concerning it rest on tradition rather than on an accurate knowledge of its contents. Its style is somewhat turgid and labori-

¹ The first draft of this note was made by William Hunter, for many years an honored official in the Department of State. Subsequently, another draft was made at Mr. Webster's request by Edward Everett ; and finally Mr. Webster, with Mr. Hunter's and Mr. Everett's drafts before him, cast the note into the form in which it became historical. Curtis, *Life of Webster*, II, pp. 535-537.

ous, and it is pervaded by a truculence of expression not in harmony with the usual dignity of Mr. Webster's manner.

Mr. Webster began by observing that, as the publication of Mr. Mann's instructions consisted in a communication of them by the president to the Senate, it was a domestic matter of which foreign powers had no right to take cognizance. On this ground, he said, the president might, perhaps, have declined to make any particular reply to Mr. Hülsemann's protest ; but out of proper respect to the Austrian government it had been thought better to answer it at length. Mr. Webster contended that the confidential explanation previously given by Mr. Clayton of the object of Mr. Mann's mission ought to have been deemed "not only admissible, but quite satisfactory," since "nothing whatever" was alleged "to have been done or said" by Mr. Mann "inconsistent with such an object." The government and people of the United States, like other intelligent governments and communities, took a lively interest in the movements and events of the age. This interest, he declared, did not proceed from any desire to depart from a position of neutrality, but from the warm sympathy of the people with movements that appeared to have their origin in those great ideas of responsible and popular government on which the American constitutions were wholly founded. The people of the United States "could not, if they would, conceal their character, their condition or their destiny." The power of the republic was already "spread over a region, one of the richest and most fertile on the globe, and of an extent in comparison with which the possessions of the House of Hapsburg" were "but as a patch on the earth's surface." The United States might, therefore, be pardoned, even by those who professed adherence to the principles of absolute governments, if they entertained an ardent affection for the popular forms of political organization which had so rapidly advanced their own prosperity and happiness. Mr. Webster further argued that if the United States had gone so far as to acknowledge the independence of Hungary, that step, although, as the result had proved, it would have been precipitate, would not have been a-

act against the law of nations, provided the United States took no part in the contest.

When this correspondence was laid before the Senate of the United States, a motion was made to print ten thousand extra copies of it. This motion was opposed by Mr. Clay, and was defeated by a vote of 21 to 18. Mr. Clay said that if a state of the United States had been in revolt, and a European government had sent an agent on such a mission as that of Mr. Mann, it would have created a great deal of feeling. He therefore doubted the soundness of Mr. Webster's contention, that it was a purely domestic transaction. It was published to the world. Its domestic character did not limit its publicity.

Meanwhile, another matter was disposed of in the Senate. In the preceding session Mr. Cass, not intending to allow the Whigs to monopolize public favor, introduced a resolution instructing the committee on foreign relations to inquire into the expediency of suspending diplomatic relations with Austria. Such a step would not, he said, in itself be a cause of offense. But he did not, he declared, "seek to deny or conceal the fact that the motives for the adoption of the measure would be unacceptable and peculiarly obnoxious to the feelings" of Austria. If he were to conceal those motives, he should not, he admitted, "look for that cordial approbation" which he "anticipated from the American people for this first effort to rebuke, by public opinion expressed through an established government, in the name of a great republic, atrocious acts of despotism" committed "under circumstances of audacious contempt for the rights of mankind and the sentiments of the civilized world." In this denunciation Mr. Cass said that he particularly referred to the act of Austria in invoking Russian aid. Seizing upon this statement, Senator Hale of New Hampshire, much to the disgust of Mr. Cass, moved to broaden the scope of the committee's inquiry. He said that he did not want the sympathies of the Senate to be "fenced in." He therefore proposed an amendment to include Russia. He also thought that "the docket ought to be called," and France placed at the bar to answer for her course in Italy, Spain and Algiers.

Spain and Turkey had likewise been guilty of objectionable acts; and there had lately been certain transactions between the United States and Mexico into which the committee might properly inquire. Mr. Clay ridiculed the resolution, and intimated that Mr. Cass's reference to the anticipated approbation of the American people was not without significance. At the close of the debate no action on the resolution was taken; and when it was called up by Mr. Cass at the next session of the Senate, in December, 1850, Mr. Badger, of North Carolina, inquired whether the statute of limitations would not apply to it. Mr. Cass replied: "Well, sir, I defer to the statute." The resolution was permitted to sleep.

On the 3d of March, 1851, however, the president approved a joint resolution of Congress "for the relief of Louis Kossuth and his associates, exiles from Hungary." This resolution requested the president, "if it [should] be the wish of these exiles to emigrate to the United States, and the will of the Sultan to permit them to leave his dominions," to authorize the employment of one of the public vessels of the United States cruising in the Mediterranean to convey them to America. Steps had already been taken by the president in that direction. As early as January, 1850, Mr. Clayton had instructed the minister of the United States at Constantinople to seek to obtain the liberation of Kossuth and his companions. Lord Palmerston instructed Canning to remind the Porte that the British government could act efficiently in support of the Ottoman Empire only so far as it might be backed by public opinion, and that the position of the Sultan as the jailer of a foreign power would destroy the feeling of sympathy which his prior conduct had aroused. The Sultan finally announced his determination to release all the refugees on the first of the ensuing September. This determination was hastened by the formal tender by the government of the United States a few days before, in conformity with the resolution of Congress, of a vessel to convey Kossuth and his companions to America.

There can be no doubt that the government of the United States contemplated the coming of Kossuth and his companions

to America in the character of emigrants. This fact appears not only by the resolution of Congress, but also by the instructions of the secretary of the navy, who directed Commodore Morgan, the commander of the squadron of the United States in the Mediterranean, to send the steamer *Mississippi* to Constantinople, as soon as he should be advised that the exiles desired "to seek a home" in the United States, and that the Sultan had consented to their departure. Kossuth, however, in his acceptance of the offer, did not refer to the matter of seeking a home, but merely expressed his impatience to be restored to liberty on board of a vessel and under "the glorious flag" of the United States. The general belief that he had ulterior designs led Commodore Morgan to order Captain Long, the commander of the *Mississippi*, so soon as he had received the exiles on board, to sail for New York, avoiding Naples and Leghorn and touching first at Spezzia, where the commodore had his headquarters. A similar caution was given to Captain Long by Mr. Marsh, the minister of the United States at Constantinople.

On the 10th of September Captain Long received on board of the *Mississippi* from a Turkish steamer, at the Dardanelles, Kossuth and his family, and a miscellaneous collection of fifty-five other persons, some of whom, as Captain Long afterward declared, had never been in Hungary; and, in order to prepare for the voyage to Spezzia, the *Mississippi* proceeded to Smyrna for supplies. When the presence of the vessel at that port became known, Kossuth was promptly visited by a committee of Italian refugees who had formed an association styled the Republican Society of the Orient, and this visit was followed by a commotion on shore of such a character as to induce Captain Long, in compliance with the request of the United States consul, to leave the port.

While this incident served to point the cautions he had already received, Captain Long soon learned from Kossuth himself something of the character of his plans. As the commander of a man-of-war on a peaceful mission, Captain Long deemed it to be his duty not to permit the presence of his ship to become the occasion or the means of hostile demonstrations

against the friendly governments at whose ports he might happen to call. This duty was imposed by his instructions, by the comity of nations, and by what he understood to be the policy of his government. Kossuth, on the other hand, proclaimed himself to be the leader of a great and impending revolution in Europe; and when he learned that the *Mississippi* would not touch at Genoa and certain other ports which he desired to visit, and that Captain Long wished to avoid a repetition of the incident at Smyrna, he declared that he was "still a prisoner," and that he would decide at Spezzia whether to continue his voyage to America.

On the morning of Sunday, the 21st of September, the *Mississippi* cast anchor in the bay of Spezzia. Kossuth at once dispatched a letter to Commodore Morgan, in which he said that he felt bound to answer the expectations which his own country, and "every other people suffering the same oppression and alike determined to shake it off," attached to his "once more free activity"; and that it would be an offense to the United States if he could entertain the slightest doubt that, once under "the protection of the stars and stripes," he was entirely free to take such course as best suited his aims. He therefore requested an immediate interview with the commodore, in order that he might decide upon the direction and the course of his "next activity." In this interview Kossuth announced his intention to visit England, where he had "highly important business" and "sacred duties" to arrange; and he asked that the *Mississippi*, if she could not carry him to Southampton, might convey him to Gibraltar and there await his return. As it was understood that the principal object of his proposed visit to England was to meet Mazzini, Ledru-Rollin and other revolutionary leaders, and in other ways to further his revolutionary enterprise, and as the season was growing late, Commodore Morgan at first insisted on a continuous voyage to the United States. Kossuth, however, followed up his interview with a rapid succession of letters, and finally proposed that the *Mississippi* should leave him at Marseilles, and then proceed to Gibraltar and there

await his return from England ; and he intimated that if this indulgence should be disapproved by the government of the United States, it would be sanctioned by "the people."

Commodore Morgan, while pointing out the possible obstacles to the proposed journey through France, yielded a desperate assent to Kossuth's last proposition. The commodore's anxiety to speed the parting guest was beginning to outweigh every other consideration ; for the incident at Smyrna was quite thrown into the shade by what took place at Spezzia. Boats filled with shouting patriots surrounded the *Mississippi*, and Kossuth added to the excitement by making the people an incendiary speech and promising them to come ashore. Hurried conferences were held between Mr. Kinney, the *chargé d'affaires* of the United States at Turin, and the Sardinian minister for foreign affairs, the result of which was that Kossuth was not permitted to land and that every exertion was made to hasten his departure. On the 23d of September, two days before the *Mississippi* sailed for Marseilles, Commodore Morgan addressed to Mr. Hodge, the consul of the United States at that port, the following letter :

MY DEAR CONSUL : — Such are the necessities and frailties of human events, that, after all, the *Mississippi* will be at Marseilles within a week with Kossuth. The devil seems to possess this gentleman. He contemplates leaving the ship at that point, with his wife and children, for England, and to join her again in twenty days thereafter at Gibraltar. His determined *wilfulness* is *unconquerable*, and the ship will speed to your city within a few days. He is *utterly ungovernable*, and I am compelled to hasten him out of this country. He is like a firebrand. The whole bay around was illuminated last night, bands of music surrounding the steamer, and he always ready for applause. The public authorities were alarmed to utter confusion, and they ran about the streets, having the appearance of somnambulists. Good morning. In great haste, *etc.*

On Friday, the 26th of September, the *Mississippi* arrived at Marseilles, where, to quote the words of Mr. Hodge, there were "eight or ten thousand Roman and other patriots, all very excitable." Mr. Hodge, however, obtained from the well-

disposed prefect of the city permission for all the refugees to go ashore, and a telegraphic request was sent to Paris to obtain leave for Kossuth to pass through France. It was not long before Kossuth's hotel was surrounded by throngs of people uttering what were described as "unsuitable cries," and on the following day, when, accompanied by the consul, he returned to the *Mississippi*, he was followed to his boat by "some thousands" of shouting and cheering admirers. Meanwhile, the French government refused to permit him to pass through France. This refusal the prefect made known by a letter to Mr. Hodge, which the latter sent to Kossuth. Kossuth immediately communicated this letter to a journal called *Le Peuple*, which Mr. Hodge characterized as a violent "*rouge* paper," together with an address of his own to the "citizens," praising them for their "manifestation of republican sentiments" — a manifestation "honorable for its motives, manly for its resolution, peaceable in its ardor, and as majestic in its calmness as nature, the grand image of God, before the tempest" — and declaring that the "honor of the French nation" was "not in the keeping" of Louis Napoleon, M. Faucher and others, to whom the executive power had been delegated. *Le Peuple* promptly published both the prefect's letter and the address, with copious animadversions, such as the following :

Indignation fills our hearts and shame reddens our brow. The French democracy must, then, drink the cup of bitterness to its dregs. . . . Léon Faucher has just cast his filthy slime on our French honor. . . . Shame and woe upon us! French honor sweats through all its pores at this [the prefect's] miserable reply.

When Mr. Hodge was made aware of this proceeding by a remonstrance of the prefect, he addressed an urgent note to Captain Long, complaining that both his official character as consul and his flag had been compromised by it. At this complaint Kossuth took great umbrage. He declared that constitutional governments should not object to publicity, and that he would confidently await the judgment of public opinion in the United States as to the propriety of his conduct. He

also expressed surprise that when, uncovering his head, he bowed his thanks to the people who came in "a hundred boats floating around the *Mississippi*, singing national songs, offering garlands of laurels" to him, "garlands of immortelles to America, and shouting 'hurrah'" to the United States and to himself, Captain Long walked the deck "without even waving his cap"; and his surprise was, he declared, still heightened, when the captain accosted him in a reproachful manner, and intimated that he (Kossuth) was compromising him by remaining on deck. He would, he said, free the captain from embarrassment by leaving the ship wherever the latter pleased.

Relieved at not having been ordered by the authorities to leave the port, and in the midst of what Mr. Hodge called a "mob valedictory," Captain Long took his departure, expressing the hope that he might "never be caught in such a net again." At Gibraltar, Kossuth disembarked with his family and proceeded to Southampton, with the understanding that, owing to the lateness of the season, the *Mississippi* would continue her voyage to America, while he himself, after arranging his affairs in England, would sail for the United States in a regular packet.

VIII. *A Revolutionary Emissary.*

On the 23d of October, 1851, Kossuth arrived at Southampton, where he was received by the mayor and corporation of the city with an enthusiastic welcome. Standing on English ground, he now displayed before an English-speaking people the marvelous versatility of his oratorical genius. It seems to have been his habit when in prison to devote himself to the acquisition of languages. In this way he is said to have mastered English during his early imprisonment in the fortress of Buda, sufficiently to read the plays of Shakespeare; and during his imprisonment in Turkey he again applied himself to linguistic studies. He could speak with fluency not only his native tongue, but Latin, Slovak, French, German, Italian and English, each of which, as occasion arose, he employed in his

addresses. Whatever may be our opinion as to his character — and it cannot be said to have been well-balanced — it must be admitted that there was something of uncommon interest in the spectacle of this exile, the representative of a defeated revolution, pleading his prostrate cause before the world, while the people, carried away by his eloquence, applauded even where they could not approve. His picturesque appearance, his misfortunes, the Oriental richness of his imagination, the quaintness and fervor of his speech, the thrilling vibrations of his voice — all combined to awaken the sympathy and enthusiasm of the people.

From Southampton Kossuth proceeded to Winchester; from Winchester he went to London; from London to Birmingham, and from Birmingham to Manchester. In all these places he spoke in his usually eloquent manner, and was received with popular demonstrations in which some men of eminence participated. He refused to meet Lord Palmerston, though an invitation to do so was conveyed to him through Lord Dudley Stuart, one of his most ardent friends and admirers. By the governing classes, Kossuth was regarded with a feeling of distrust — a feeling doubtless enhanced by the consciousness on their part that his mission, so far as it looked to material aid, was visionary. It was evident that he sought something more than sympathy. While he continually protested that all his solicitations were peaceful, he skillfully played on the anti-Russian sentiment which then specially prevailed in England, and it was impossible not to see that the policy he advocated rested in the last analysis on armed intervention.

On the 24th of November Kossuth embarked at Southampton on the American steamer *Humboldt* for the United States. He arrived at New York on the night of the 4th of December, after a stormy passage; and, in spite of the lateness of the hour, the health officer of the port boarded the steamer at quarantine and delivered the following address of welcome, which, though somewhat florid, was pitched in the requisite key:

ILLUSTRIOUS MAGYAR! NOBLE KOSSUTH!—We greet you from the Western World. Welcome to the land of freedom! Welcome to the Republic of America! which, though yet in its infancy, demonstrates that man is fitted for self-government — which rises like a lighthouse in the skies, as a memento to the lovers of freedom throughout the whole world. You come to us not a stranger. No! From the pine-forests of Maine to the sugar-bottoms of Texas; from the coal-fields of Pennsylvania to the golden mountains of California,—in all that vast region of country, washed on one side by the stormy Atlantic and on the other by the calm Pacific, the name of Kossuth will unlock every heart; and your coming will be the signal for the uprising of eighteen millions of people, to give you a generous, cordial, heart-felt and enthusiastic welcome.

Though suffering from the effects of his voyage, Kossuth was immediately called upon to address numerous delegations; and on the 6th of December a great public reception was given in his honor by the municipal authorities. Public men and private persons, the civil and the military, judges and lawyers, political societies, Sons of Liberty, European democrats, omnibus proprietors, volunteer fire companies and citizens generally, were invited to participate. Proprietors of hotels, the custodians of public buildings and the masters of vessels in port were requested to display their flags.

On this occasion Kossuth, in a public address, cast off all reserve, and in his “official capacity” as the representative of Hungary, made an appeal for aid. Europe was, he declared, on the eve of great events. The course of the government of the United States in regard to his liberation had produced a “conviction throughout the world” that the people had resolved to “throw their weight into the balance” in which “the fate of the European continent was to be weighed.” Humble as he was, God, the Almighty, had selected him to represent the cause of humanity before them. His aim was to restore his fatherland to the full enjoyment of its declaration of independence, which, having been lost through the violent invasion of Russian arms, was “fully entitled to be recognized by the people of the United States.” What could be opposed to

this recognition? "The frown of Mr. Hülsemann?" The "anger of that satellite of the Czar, called Francis Joseph, of Austria?" The "immense danger," which some European and American papers threatened, that the American minister at Vienna would be offered his passports, and that Mr. Hülsemann would leave Washington? As to the minister at Vienna, how could the people reconcile their permitting him to stay there with their opinion of the cause of Hungary? As to Mr. Hülsemann, it was not likely that he "would be so ready to leave Washington." He had "extremely well digested the caustic pills which Mr. Webster" had "administered to him so gloriously." Having thus expounded his aims, Kossuth declared that he had not come to the United States for a "happy rest," but to entreat of the people their "generous aid." He had been granted a reception "unparalleled in history," though, in so saying, he was aware that Lafayette was received in a similar manner. But Lafayette had claims to the country's gratitude. He had fought in the ranks for its freedom and independence. "He was," said Kossuth,

the link of your friendly connection with France — a connection, the results of which were two French fleets of more than thirty-eight men-of-war, and three thousand gallant men who fought side by side with you against Cornwallis before Yorktown; the precious gift of twenty-four thousand muskets; a loan of nineteen millions of dollars; and even the preliminary treaties of your glorious peace negotiated at Paris by your immortal Franklin. I hope the people of the United States . . . will kindly remember these facts; and you, citizens of New York, will yourselves become the Lafayettes of Hungary. . . . I am told that I will have the honor to review your patriotic militia. Oh, God! how my heart throbs at the idea, to see this gallant army enlisted on the side of freedom against despotism; the world would be free, and you the saviors of humanity.

In an address made a few days later to a party of visitors from a distant city, Kossuth entered into an elaborate argument to show that the consideration of distance should not deter the United States in the case of Hungary, any more than in the case of Cuba, from interfering against European invasion.

Cuba was six days distant from New York, Hungary was eighteen. Was this, he asked, a circumstance to regulate the conduct and the policy of a great people?

During his sojourn in the city of New York Kossuth continued daily to witness manifestations of widespread popular interest. Delegations from the New York bar, from the New England Society, from various political, religious and philanthropic associations, and from cities and towns, far and near, waited upon him. Between the 6th and the 22d of December he received upwards of thirty-five visiting bodies, besides attending numerous dinners and public receptions given in his honor; and the enthusiasm which he aroused by his addresses on these occasions bears ample testimony to the power of his oratory, as well as to the versatility of genius that enabled him in a strange land and in a strange tongue to adapt his discourse to such rapidly shifting conditions.

On the 24th of December Kossuth arrived in Philadelphia. The cold was intense. A deep snow covered the ground, and the Delaware river was frozen so hard that vehicles drawn by horses could cross it on the ice. Kossuth spoke from the balcony in the rear of Independence Hall to a dense crowd that filled the square. Just as he had done at New York, Kossuth took especial pains to assure the people that he did not propose to meddle with their "domestic questions." But it was not quite clear to all how this assurance, whose obvious purpose was to conciliate the favor of Southern statesmen, could be reconciled with his theory of intervention and the grounds on which he placed it. About the time of his arrival in Philadelphia there appeared in a local journal a fictitious letter, purporting to have been written by William B. Reed, the state's attorney, in which Kossuth was apprised that "the intervention or non-intervention sentiments" which he had promulgated in New York were "unsuitable to the region of Pennsylvania," situated as she was "on the borders of several slave-holding States"; that such sentiments were "incendiary in their character and effect," and that they "would be brought to the notice of the grand inquest of the county, for their con-

sideration and action." Though Mr. Reed immediately disavowed the authorship of this letter, Kossuth at a public dinner sought occasion to say:

I avail myself of this opportunity to declare once more that I never did or never will do anything which, in the remotest way, could interfere with the matter alluded to, nor with whatever other domestic question of your United Republic, or of a single state of it.

By such expressions, as well as by the anxious haste with which he disavowed and condemned certain anti-slavery sentiments uttered in New York by one of his companions in revolution and in exile, he incurred the denunciation of Garrison, Phillips and other leading Abolitionists. And was not the logic of the situation on the side of the Abolitionists? Liberty, as Kossuth professed it, could not mean one thing in Europe and another thing in America; and his efforts to magnify its importance in Hungary, whilst eagerly pronouncing its denial to a numerous race in the United States to be a "domestic question," led many to doubt the rigor of his principles and the elevation of his motives.

But Kossuth's immediate objective was the national capital, where he hoped to be received in what he called his "official capacity," and to bring the government into line with his policy. For this reason he had shunned "domestic questions." At Washington, however, a disposition was manifested to treat his visit purely as a domestic question. Of all those who shared this inclination, the most conspicuous was Mr. Webster. It is well known that at this time Mr. Webster ardently desired the Whig nomination for the presidency. The nomination of General Taylor by the Whigs in 1848 had been a bitter disappointment to him, and he had declared it to be a nomination "not fit to be made"; and, although no official position could have added to the luster of his just renown, he looked forward in his declining years with a last desperate hope to the Whig convention in 1852 for the coveted distinction. Only a fortnight before Kossuth's arrival in New York a numerous assembly of delegates in Massachusetts issued an ad-

dress to the people of the United States, in which Mr. Webster's claims to the presidency were formally set forth. As an aspirant for popular favor, who at the same time held the office of secretary of state, Mr. Webster well understood the delicacy of the situation in which the approach of Kossuth placed him. One of the chief stumbling blocks in the way to his final ambition had been the fact that, while he received the homage due to great abilities, he was unable to excite popular enthusiasm for himself; and, in the present critical conjuncture, he did not want to be charged with coldness.

Before the arrival of Kossuth at New York, Mr. Webster was advised, by the reports made to the Department of State of the incidents at Spezzia and Marseilles, that Kossuth was not coming to the United States as an emigrant, but as the representative of popular principles in some as yet undefined sense, and that he expected to appear as the guest of the nation and to invest his visit with public importance. Being thus informed, Mr. Webster, toward the close of November, sent for Senator Foote, who had offered the resolution under which the *Mississippi* was sent to Turkey, and informed him that the president would recommend to Congress in his annual message "to consider in what manner Governor Kossuth and his companions, brought hither by its authority," should "be received and treated." He then requested Mr. Foote to introduce a joint resolution to raise a committee to carry out this recommendation. Mr. Foote did not appear to be anxious to undertake the business, and suggested that, if Congress should raise a joint committee, Mr. Webster himself should deliver the address of welcome. This suggestion Mr. Webster promptly declined, on the ground of his unwillingness to do anything that might compromise the government's "neutral relations"; but he referred to the case of Lafayette, which, he said, might be treated as a precedent, and expressed the opinion that the best mode of receiving Kossuth would be to bring him, without any particular ceremony, to each house of Congress, and have him introduced by the presiding officer with suitable addresses on each side. Mr. Foote still declined to enter into

the project unless he should be authorized to say that he acted at the instance of the secretary of state, and this point Mr. Webster conceded.

When Congress assembled Mr. Foote immediately brought in a resolution for the appointment of a joint committee to receive Kossuth "on his arrival in the United States," and to tender to him "the hospitalities of the capital." Though Mr. Foote stated that he was acting "in unison with the administration, and somewhat at the instance of the secretary of state," strong opposition to the resolution was manifested on both sides of the Senate. Mr. Foote, in moving the adoption of the resolution, declared: "There has been but one Washington, and there is but one Kossuth—distinguished in war as in peace." When asked to name a single battle in which Kossuth was ever distinguished, he sharply told his interrogator that every one was "bound to know" such facts—a dexterous reply, if not altogether polite. At this point John P. Hale, the great Freesoiler, introduced confusion by announcing his intention to offer an amendment, expressive of the hope that the time might speedily come when the rights of man should be respected by all governments. Quick to suspect a hidden meaning, Mr. Foote said that he hoped that the subject before the Senate would "be discussed in language suited to the ears of statesmen," and declared that the amendment was "demagogical." He also insinuated that Mr. Hale was "seeking notoriety," to which the latter retorted that he was only trying in an humble way to play tail to the kite Mr. Foote had set flying. Mr. Cass now rose and protested against introducing into the discussion any "abstract declaration as to the rights of man"; it was simply throwing the "firebrand of slavery" into the hall. There was, he declared, no excuse for it. The agitation produced by Mr. Hale's announcement was so great that the Senate lost sight of the fact, till the presiding officer recalled it, that the amendment had not in reality been offered and was not before the house. As the result of the debate, however, Mr. Foote withdrew his resolution, and Mr. Seward gave notice of a substitute simply to declare that Congress, in the name of

the people, extended to Kossuth a cordial welcome to the capital and the country.

Before action could be taken on Mr. Seward's resolution, Kossuth arrived in New York and made his speech at Castle Garden. The grotesquely incongruous spectacle of the nation's guest, then on his way to the capital in his "official capacity," denouncing the heads of friendly governments, heaping ridicule on the minister of one of them, and inciting the people to take up arms against both of them, was not without its effect. Even Mr. Foote was led to admit that the "original expectations" with which he introduced the resolution to bring Kossuth and his associates to the United States "had not been founded upon actual facts"; and a member of the House of Representatives gave notice of a resolution to request the president to send Kossuth copies of certain laws, and to have him arrested, if, after reading them, he continued to make such speeches as that at Castle Garden. Protestations, however, were in vain. Popular excitement, instead of subsiding, was actually rising, and statesmen who had engaged for the voyage could see no reason for abandoning it so long as the wind and tide were with them. Mr. Seward's joint resolution passed the Senate and the House of Representatives by large majorities. A few days later a resolution was adopted by the Senate by a smaller majority, and against strong opposition, to appoint a committee to present Kossuth to that body. A similar resolution was adopted by the House by a vote of 154 to 54, but its opponents delayed its passage till nearly a week after Kossuth's arrival in Washington.

As the time of Kossuth's arrival in that city drew near, Mr. Webster's anxieties increased. On December 23 he wrote privately to a friend: "It requires great caution so to conduct things here, when Mr. Kossuth shall arrive, as to keep clear both of Scylla and Charybdis." Two days later he wrote to another friend: "Kossuth is in Philadelphia; his presence here will be quite embarrassing. I am a good deal at a loss what to do and what to say. I hope I may be able to steer clear of trouble on both sides." On December 30, the day of

Kossuth's arrival in Washington, Mr. Webster had a case to argue in the supreme court. Writing to President Fillmore early in the day, he said: "He [Kossuth] will be, it is said, immediately surrounded by the Jackson Association, and it is doubtful whether I can see him till after court." In the afternoon, Mr. Webster wrote in a private letter as follows:

I have called on Kossuth. No exception, certainly, can be taken to his appearance and demeanor as a gentleman; he is handsome enough in person, evidently intellectual and dignified, amiable and graceful in his manners. I shall treat him with all personal and individual respect, but, if he should speak to me of the policy of intervention, I shall "have ears more deaf than adders." I go with him to the President's tomorrow. The President invites him to dine on Saturday.

On December 31, Mr. Webster wrote to the same friend:

I have now come from the President, where with Governor Seward I have been presenting Kossuth. The President received him with great propriety, and his address was all right. Sympathy, personal respect and kindness, but no departure from our established policy.

Kossuth was both disappointed and chagrined by President Fillmore's address, but it was not the fault of the president. Mr. Fillmore was under the impression that an explicit understanding had been reached with Kossuth, through his secretary, that no allusion would be made in his speech to the subject of intervention; and the president had prepared his reply accordingly. To his surprise, Kossuth made a direct appeal for aid. The president was thus compelled to frame an address on the spur of the moment; and with courtesy and dignity, but with perfect candor, he declared that no sanction, much less material assistance, could be given by the United States to the cause Kossuth advocated. This incident rendered Kossuth's intercourse with the White House somewhat embarrassing. Of the dinner subsequently given in his honor by the president, a person who was present has written the following account:

During and after dinner the bearing of the guest, in behalf of whom the banquet had been given, was stately and constrained. It was evident that he felt sore and angry. He stood apart after dinner, in a manner which repelled attempts to enter into conversation with him. His whole appearance, alike by his picturesque costume and his attitude and expression, suggested a moody Hamlet, whom neither man nor woman pleased. After a vain attempt to engage him in conversation on Hungarian topics, I asked Mr. Fillmore what had happened to his illustrious guest to have thrown him into such an evidently ungenial state of feeling. He said it was in consequence of what had occurred at his presentation.

For his disappointment at the White House, Kossuth found compensation in his reception by Congress — a compensation, however, that was wholly illusory. On January 5, 1852, he was received by the Senate, and on the 7th by the House of Representatives. In the Senate the proceedings were purely formal, and there were no addresses; in the House the same formality was observed, but Kossuth, after his presentation, briefly expressed his thanks for the cordiality of his reception. On the evening of the 7th of January, he attended a Congressional banquet, at which William R. King, then President of the Senate, assisted by the Speaker of the House of Representatives, presided. Both these gentlemen were averse to the Congressional demonstrations, and participated in them with reluctance. But among the principal speakers at the dinner was Mr. Webster; and it is proper that the explanation he made to President Fillmore of the motives of his attendance, when, only a few hours before the banquet, he decided to be present, should be given as he wrote it:

I have come to the conclusion that it is well for some of us to go to the dinner this evening. The President of the Senate is to preside, and the Speaker of the House is to act as vice-president. It has been said that assurances have been given that nothing shall be said that shall justly be offensive to these gentlemen as anti-intervention men. But what chiefly influences me is, that I learned yesterday that preparations were making for a good deal of an attack upon us, if no member of the administration should pay Kossuth the

respect of attending the dinner given to him by members of Congress, of all parties, as the nation's guest. I wish the Heads of Departments could see their way clear to go, as I think I shall go myself. In the present state of the country, especially in the interior, where Kossuth is going, I should not like unnecessarily to provoke popular attack.

Kossuth's reception at the banquet was most enthusiastic. It was, indeed, a Kossuth night. All present were "completely entranced by his singularly captivating eloquence." One who was present writes :

I was assigned a seat next Mr. Seward, and his demonstrations of applause by hands and feet and voice were excessive. The "Hungarian Whirlwind" certainly carried away everything on that occasion, and mingled all parties into one confused mass of admirers prostrate at Kossuth's feet. His speech seemed to me wanting in no element of a consummate masterpiece of eloquence.

On the other hand, Mr. Webster's manner on this occasion has been described as "constrained"; and it is said that "after the high pitch of enthusiasm to which the audience had been wrought up," his speech "fell rather heavily upon them, and did not give that measure of encomium of M. Kossuth which their feelings at the moment craved." The same authority, a personal friend of Mr. Webster, tells us that "his recent experience in connection with M. Kossuth, while it had not diminished his admiration of his brilliant ability, had "convinced him that, though matchless as an orator, he was no statesman." For the most part, Mr. Webster's speech was colorless, but he closed it with the declaration that the first prayer for Hungary should be that she might become "independent of all foreign powers." He did not profess to understand "the social relations and connections of races and of twenty other things" that might affect "the public institutions of Hungary." All he could say was that she could regulate these matters for herself "infinitely better" than they could "be regulated for her by Austria ; and, therefore," said Mr. Webster, "I limit my

aspirations for Hungary, for the present, to that single and simple point—Hungarian independence, Hungarian self-government, Hungarian control of Hungarian destinies.”

On the evening on which Mr. Webster made this speech, there was another statesman in Washington, whose name will ever be associated with his in the great triumvirate—Henry Clay, who refused to countenance an agitation which he knew to be harmless only so far as it was hopeless. Kossuth more than once expressed a desire to meet him, and Mr. Clay, though in feeble health, at length granted him an interview. It is said that on a certain occasion, after receiving a party of American statesmen, of whom Mr. Clay was one, Lord Castlereagh, while speaking appreciatively of all his visitors, said he “liked that man from Kentucky best.” The charm and cordiality of Mr. Clay’s manner never forsook him, and he received Kossuth with the utmost kindness. But his candor was equal to his kindness; and it may be said that there was kindness in his candor. “For the sake of my country,” said Mr. Clay, addressing Kossuth,

you must allow me to protest against the policy you propose to her. Waiving the grave and momentous question of the right of one nation to assume the executive power among nations, for the enforcement of international law, or of the right of the United States to dictate to Russia the character of her relations with the nations around her, let us come at once to the practical consideration of the matter. You tell us yourself, with great truth and propriety, that mere sympathy, or the expression of sympathy, cannot advance your purposes. You require material aid. . . . Well, sir, suppose that war should be the issue of the course you propose to us, could we then effect anything for you, ourselves, or the cause of liberty? To transport men and arms across the ocean in sufficient numbers and quantities to be effective against Russia and Austria, would be impossible. . . . Thus, sir, after effecting nothing in such a war, after abandoning our ancient policy of amity and non-intervention in the affairs of other nations, and thus justifying them in abandoning the terms of forbearance and non-interference which they have hitherto preserved toward us; after the downfall, perhaps, of the friends of liberal institutions in Europe: her despots, imitating and provoked by our

fatal example, may turn upon us in the hour of weakness and exhaustion, and with an almost equally irresistible force of reason and of arms, they may say to us : " You have set us the example ; you have quit your own to stand on foreign ground ; you have abandoned the policy you professed in the day of your weakness, to interfere in the affairs of the people upon this continent, in behalf of those principles, the supremacy of which you say is necessary to your prosperity, to your existence. We, in our turn, believing that your anarchical doctrines are destructive of, and that monarchical principles are essential to, the peace, security and happiness of our subjects, will obliterate the bed which has nourished such noxious weeds ; we will crush you, as the propagandists of doctrines so destructive of the peace and good order of the world." The indomitable spirit of our people might and would be equal to the emergency, and we might remain unsubdued, even by so tremendous a combination, but the consequences to us would be terrible enough. You must allow me, sir, to speak thus freely, as I feel deeply, though my opinion may be of but little import, as the expression of a dying man. . . . By the policy to which we have adhered since the days of Washington, we have prospered beyond precedent ; we have done more for the cause of liberty in the world than arms could effect ; we have shown to other nations the way to greatness and happiness. . . . Far better is it for ourselves, for Hungary and for the cause of liberty, that, adhering to our wise pacific system and avoiding the distant wars of Europe, we should keep our lamp burning brightly on this western shore, as a light to all nations, than to hazard its utter extinction, amid the ruins of fallen or falling republics in Europe.

When Kossuth left Washington on the 12th of January, he addressed to President Fillmore a farewell letter, with a request that it might be communicated to Congress. To this request the president, through Mr. Webster, declined to accede, at the same time suggesting that the letter might be sent to the presiding officers of the two houses. On this suggestion Kossuth subsequently acted, but his letter, which dwelt overmuch on the honors shown him, and expressed the hope that the United States would pronounce in favor of the law of nations and of international rights and duties, was coldly received. A motion to print it was carried in the Senate by only one vote, and the arguments in support of the motion

were almost exclusively confined to considerations of courtesy. One Senator roundly denounced the "Kossuth humbug," and declared that it could not again be "galvanized into life." Another spoke of the reception by the Senate as a "dumb show." Another yet, paraphrasing the words of Falstaff, said that Kossuth not only had much "talk" in himself, but was the cause of talk in other men. Indeed, the sudden collapse of Kossuth enthusiasm in high places, after his departure from the capital, would have been inexplicable, if the open opponents of his policy of intervention had found any one to meet them on that ground.

There is only one incident of Kossuth's visit to the national capital that remains to be narrated. However well the Chevalier Hulsemann may have "digested the caustic pills which Mr. Webster administered to him so gloriously," it was his somewhat ironical misfortune to figure from first to last as the principal victim of the Hungarian excitement. Some time after his diplomatic physicking he made a trip to Havana, and on his passage through New Orleans he was subjected to what he described as "demonstrations of an exceedingly disagreeable character." Of this circumstance, as well as of the fact that his interviews with the Department of State were derisively commented upon and burlesqued in certain newspapers, he sought occasion, after his return to Washington, to complain to Mr. Webster. Mr. Webster, deeming the language of his complaint to be offensive, informed him that thenceforth his intercourse with the department must be exclusively in writing. After Kossuth's reception in New York Mr. Hulsemann accordingly addressed to Mr. Webster a note, in which he complained of the military honors paid to Kossuth by the federal authorities. To this note Mr. Webster did not reply; and Mr. Hulsemann's perplexities were afterwards increased by Mr. Webster's speech at the Kossuth banquet. Finding himself apparently excommunicated by the Department of State, Mr. Hulsemann now resolved to try a direct appeal to the president; and, although he was only a *chargé d'affaires ad interim*, and not entitled to claim an audience of the head of

the government, the president not only received him but assured him of his desire to maintain friendly relations between the United States and Austria. But as this assurance was not followed by any official communication, and as no step was taken by Mr. Webster towards a reconciliation, Mr. Hülsemann in the latter part of April gave notice that his government could not allow him to remain in Washington any longer, "to continue an official intercourse with the principal promoters of the much-to-be-lamented Kossuth episode." At the same time he tendered his "respectful thanks to the president for his invariably obliging conduct" towards him, and stated that the consul-general of Austria in New York would "continue to perform his functions until further orders."

When this note was received at the Department of State Mr. Webster was absent, and by his direction it was formally answered by the acting-secretary. On his return, however, he addressed a communication on the subject to Mr. McCurdy, the *chargé d'affaires* of the United States at Vienna, and instructed him that he was at liberty to read it to the Austrian minister for foreign affairs. In this paper Mr. Webster said it was obvious from the tenor of Mr. Hülsemann's recent communication that, notwithstanding his long residence in the United States, he was quite uninformed as to the character of American institutions, and as to "the responsibilities of public men in the United States for their acts or their sentiments in a private capacity in regard to foreign powers." Mr. Hülsemann had yet to learn that no foreign government or its representative could "take just offense at anything which an officer" of the United States might "say in his private capacity." "Official communications only," said Mr. Webster, were "to be regarded as indicating the sentiments and views of the government of the United States"; and, if those communications were of a "friendly character," the foreign government had no right or reason to infer that there was any insincerity in them, or "to point to other matters as showing the real sentiments of the government."

Chief-Justice Marshall once said of a great argument that its

only defect was its "want of verisimilitude." Mr. Webster's letters have already shown us that their writer was not unconscious of the inconveniences of his position at the Kossuth banquet. But if the secretary of state could, without resigning his office, so completely resume his private capacity that a foreign government could not even infer anything from what he said about it in a public speech, it is not clear why Mr. Webster's course, instead of being beset, as he said, by a Scylla and a Charybdis, should not have been attended with "all that poets feign of bliss and joy." In the same way a dose of the "caustic pills" administered to Mr. Hülsemann might have been administered to his master, or to any other foreign sovereign, with equal impunity, and with even greater glory.

But the fatal defect in Mr. Webster's position was the fact that Kossuth did not come to Washington in a "private capacity," but as the "representative of Hungary"; and Mr. Webster, being apprised of this fact, sought an opportunity publicly to declare in his presence a wish that the revolution might yet be successful. If with this declaration he had coupled a public disclaimer of any purpose to endorse the policy of intervention which Kossuth proposed, his position would have been vastly stronger. Such a disclaimer, however, he did not make; and Mr. Hülsemann was hardly censurable, especially as his note remained unanswered, in assuming that what the secretary of state declared publicly, though in "a private capacity," might in the end be confirmed by his official communications, if it was not already reflected in his official acts.

In the following autumn Mr. Webster died at Marshfield. Perhaps it may be said that he had in one respect made Mr. Hülsemann his debtor. He had, indeed, treated him somewhat inconsiderately. He had manifested towards him an irritability, excited by perplexities, which it had been better to avoid. But he had in a manner associated Hülsemann, though ungraciously, with his own imperishable name. When Edward Everett, after the death of Mr. Webster, became secretary of state, he soon found an opportunity to convey to the

Austrian government a graceful intimation that it would be agreeable to the president if Mr. Hülsemann should return to his post. In due time Mr. Hülsemann resumed his official functions, and he thereafter continued in the discharge of them for a period of more than twelve years.

After his departure from Washington, Kossuth made an excursion through the West and South, and afterward through the North and East. He spoke at Harrisburgh, Pittsburgh, Cleveland, Columbus, Cincinnati, Indianapolis, Louisville, Memphis, Jackson, Mobile, St. Louis, Buffalo, Syracuse, Utica, Albany, New Haven, Springfield, Worcester, Lowell, Salem, Lexington, Concord, Plymouth, Faneuil Hall and Bunker Hill. He addressed the Senate of Maryland and the House of Representatives of Pennsylvania, and he was banqueted by the legislature of Massachusetts. Subsequently he returned to New York, and, after remaining there for the most part quietly for two months, he sailed for England. From the gifts of admirers and the sale of "Hungarian bonds" he had realized the sum of about ninety thousand dollars. This was the only substantial aid that he derived from his visit. His departure was scarcely noticed. The popular excitement concerning him died out with a suddenness proportionate to its extravagance. His triumphal progress, however, left its traces in the popular fashions. For a time "Kossuth hats" were much in request. But far more enduring was the encouragement he gave to the wearing of beards. As Jonas Hanway opened the way to the use of umbrellas in England, so Kossuth by his own example taught the men of the United States that the wearing of beards was not unmanly.

In England Kossuth joined Mazzini and Ledru-Rollin and entered into their revolutionary conspiracies. In 1853, in consequence of a local uprising produced in Hungary, his mother and sisters were banished from the country, and several persons were executed. In 1854 he sent a vehement protest to the United States against the refusal of the Senate to confirm in office a person who, after proceeding to London as consul of the United States, became notoriously implicated in attempts

planned in that city to start a revolution on the continent. The funds Kossuth collected in the United States were soon absorbed in his revolutionary enterprises, and he made a tour of England and Scotland, delivering lectures. In 1859 his hopes were revived by the preparations of France and Italy for war against Austria, and he entered actively into the plans of his former aversion, Louis Napoleon, with reference to that object. His hopes, however, like those of many others, were dashed by the peace of Villafranca.

When Déak and Andrassy succeeded in bringing about the dual system under which the Austrian and Hungarian crowns are now united, Kossuth exhorted the Hungarians to repudiate it. In 1867 he refused to accept an election as deputy to the Hungarian Diet for Waitzen, being determined never to recognize the House of Hapsburg-Lorraine as the possessor of the Hungarian crown. Subsequently he lost his Hungarian citizenship in consequence of a law denationalizing persons who absented themselves from the country for a period of ten years. To the end he continued to protest against the abandonment by the Hungarians of the cause of national independence. But the outbursts of feeling which took place in Hungary on the occasion of his death, and the remarkable scenes that attended his interment in his native soil, have revealed the depth of his hold on the affections of the people, as well as the permanence of the fascination that enabled him in the days of his power to enlist his countrymen in the cause of independence.

Neither by origin nor by position was Kossuth destined to play a leading part in the affairs of Hungary. He had neither wealth nor rank to aid him, but he embodied, as no one else did, the national impulses of the time, and he expressed them with an eloquence that was irresistible. His weapon was oratory. To military genius he could not lay claim. The conduct of military operations he left to his generals. He could inspire the people to take up arms, but he could not lead them in the field. He influenced the army as citizens, not as soldiers. He led no charges and conducted no cam-

paigns. When only a last desperate hope remained, he resigned his authority into the hands of a military dictator.

As a statesman Kossuth's limitations resulted from his temperament. He was a revolutionist. The qualities that made him the orator that he was, incapacitated him for statesmanship. To say that he would not recognize the truth that

Who does the best his circumstance allows
Does well, acts nobly,

would, perhaps, be unjust to him. It is probable that he could not grasp it. Under the dual system planned by Déak Hungary substantially secured the full measure of constitutional, legislative and administrative autonomy which Kossuth himself originally sought. But, while his old associate in the Revolution, Andrassy, first as prime minister of Hungary and afterwards as imperial minister for foreign affairs, was not only gaining for Hungary the liberties she desired, but enabling her to wield a paramount influence in imperial councils and thus to affect the destinies of Europe, Kossuth wasted his days in vain regrets not untinged with resentment. It was because of this impracticable temper that the man who, as the incomparable orator of the Hungarian Revolution, fascinated the imagination of the civilized world, came to devote himself to the fantastic pursuit of a delusive project, and, after having signally failed both as an advocate and as a conspirator to accomplish his ends, preferred to die in self-imposed exile.

JOHN BASSETT MOORE.

A TRIAD OF POLITICAL CONCEPTIONS : STATE, SOVEREIGN, GOVERNMENT.

STATE, sovereign, government — these are words that meet the student of politics and jurisprudence at every turn. As scientific names it is highly important that they should have determinate meanings ; but unfortunately they are employed by different authors, and sometimes even by the same author, in various senses. Amos mentions four discrepant connotations currently given to the term state.¹ According to Rousseau, state and sovereign denote respectively the passive and the active aspect of the body politic.² Bentham makes the sovereign parcel of the government. Austin uses state and sovereign interchangeably. In Holland's view, the sovereign is but one of the two parts into which the state is divisible. Some writers insist on the necessity of carefully discriminating government from state and sovereign.³ Others take government as a synonym of state.⁴ Indeed, examples of the confusion complained of might be multiplied indefinitely. No one, then, can deem it unprofitable to inquire what object of thought each of these capital and hard-worked terms most commodiously signifies, what the essential characters of the objects thus signified are, and precisely how these objects are related to one another.

In the following pages I shall try to contribute something by way of answer to these questions.

¹ The Science of Law, p. 118.

² See Rousseau, *Contrat Social*, l. i, ch. vi ; Bentham, *Principles of Morals, etc.*, ch. xvi, § 17 ; Austin, *Jurisprudence*, vol. i, p. 249, n. (p) ; Holland, *Jurisprudence* (1st ed.), p. 38.

³ Rousseau, *Contrat Social*, l. iii, ch. i ; Pomeroy, *Constitutional Law*, § 37, p. 28 ; Burgess, *Political Science and Comparative Constitutional Law*, I. 68.

⁴ Hearn, *Legal Duties and Rights*, ch. i, § 3.

I. *The State.*

I. An adequate analysis of the state in what may be called its outward or mechanical, as distinguished from its inward or organic, aspect requires us to notice at least the following topics, namely, its members, its territory, its political organization and its independence.

1. A state is a large aggregation of families, men, women and children.

The harmonization of vast population with constitutional freedom, which resulted from that wonderful Teutonic invention, representative government, was, of course, never dreamed of by Aristotle, the path-breaker in political science. Seeking to determine the ideal conditions of the Hellenic city-state, he says that a *πόλις* should have no more citizens than might be assembled in its market-place and taken in at a single view by the magistrate's eye.¹ He recognizes, however, that there is a minimum limit also to the number that can constitute a true state. Too small a group both would lack material for the varied coöperation necessary to the "good life" which the state should realize,² and would be fatally wanting in ability to resist the aggression of external foes.

In consonance with this, Hobbes mentions as the first essential of a commonwealth a "multitude sufficient to confide in for our security . . . not determined by any certain number, but by comparison with the enemy we fear": and it is "then sufficient when the odds of the enemy is not of so visible and conspicuous moment, to determine the event of war, as to move him to attempt."³

In criticising this passage, Austin remarks that if the capacity successfully to withstand every imaginable hostile combination be an indispensable attribute of an independent political

¹ Politics, bk. vii, chs. iv, v; Eth. Nic. IX, 103.

² ἡ πόλις . . . γενομένη μὲν τοῦ ζῆν ἕνεκεν, οὐσα δὲ τοῦ εἶ ζῆν. Politics, bk. vii, ch. iv.

³ Leviathan, ch. xvii. To the same effect, Rousseau, Contrat Social, l. ii, ch. ix, *ad fin.* But *cf. Id.*, l. iii, ch. xv, *ad fin.* and note.

society, neither past nor present furnishes an example of one, since no community ever could possess might enough to stand against the world in arms.¹ The truth of this is obvious; but it may be freely conceded without any abandonment of the position that a certain power of numbers is inseparable from the conception of the state. A society which is so small numerically as to be practically defenseless, and which exercises autonomy purely by the sufferance of its neighbors or merely as a temporary consequence of their mutual fears and jealousies, is at best a kind of toy — a fragile political curiosity which only chance preserves against the spirit of conquest and “the general hatred of the small-state system.”²

2. A second requisite of the state is a determinate territory, the home of the members.

It is scarcely necessary to recall how deeply Greeks and Latins blended their notions of civil society with the idea of the *πόλις* or *urbs*, whose area was the focus of their collective life, the abode of their great tutelary gods, the scene of their keenest pleasures, the only place where they could exercise and enjoy the full privileges of citizenship. In no other conception of polity does the element of definite locality loom so conspicuously as in this of the city-state. Among the Teutons, the architects *par excellence* of the nation-state, a clear recognition of community of country as a prime force in political coalescence was but tardily developed. For a considerable period after they had won for themselves seats within the bounds of the Roman empire

they appear to have retained the traditions which they brought with them from the forest and the steppe, and to have still been in their own view a patriarchal society, a nomad horde, merely encamping for the time upon the soil which afforded them sustenance.³

Their sense of political unity was mainly personal in its source; it was derived in larger measure from their common

¹ Jurisprudence, vol. i, p. 241.

² Bluntschli, *The Theory of the State* (trans. 1892), pp. 239, 16; Sidgwick, *Elements of Politics*, pp. 209, 210.

³ Maine, *Ancient Law* (3d Am. ed.), ch. iv, p. 100.

loyalty to the chieftain or king whom they obeyed than from the idea of the region they inhabited together. With the advent of the tenth century, however, feudalism appeared, and throughout nearly all western Europe the authority of rulers and the correlative obligations of subjects were, both in theory and in fact, founded upon the basis of graduated proprietary interests in certain territorial areas.¹ No doubt the prevalence of this system, at once a form of civil polity and a mode of tenure of land, contributed to establish a fixed geographical boundary among the chief ingredients of the conception of the state.²

The conjunction in thought between a political society and its territory has now become so close that, as Sidgwick points out,

the two notions almost blend, and the same words are used indifferently to express either: thus we sometimes mean by "a state" the territory of a political community, and we sometimes mean by a "country" the political community inhabiting it. We speak of crossing the boundaries of a "state" and we say that a "country" has made up its mind.³

3. Although Aristotle asserts that in every state there must be a supreme power placed in the hands of one person, of a few or of many, and proceeds to discuss the question where it ought to be lodged;⁴ nevertheless, it was reserved to the Frenchman, Bodin, writing in the latter half of the sixteenth century, first adequately to point out that the political organization of the state consists in the existence between its members of an all-comprehending relation of sovereign and subject.⁵ From that time to the present, the leading conception of the science of politics has been drawn from the fact of

¹ "Land has become the sacramental tie of all public relations." Stubbs, *Const. Hist.*, vol. i, p. 167.

² Maine, *Ancient Law* (3d Am. ed.), p. 102.

³ *Elements of Politics*, pp. 213, 219, 220.

⁴ *Politics*, bk. iii, chs. 7, 10, 11.

⁵ Bodin's *De la République* was published in Paris in 1576, his Latin version of it ten years later. See Crane and Moses, *Politics*, pp. 41-43; Pollock, *Hist. of the Science of Politics*, pp. 46-53.

sovereignty — “a power,” says Bodin, “supreme over citizens and subjects, itself not bound by the laws.” Around this fact the thought of publicists and moralists has unweariedly circled, and out of the efforts to set forth its cause and furnish its ethical justification developed the once formidable dogma of the divine right of kings and the celebrated fiction of the social compact.

Every independent political society exhibits a determinate ruling part to whose will, when expressed by some sufficient sign, the bulk of the members of such society are habitually obedient. Such general obedience, whatever its other sources, is greatly due to the fact that the ruling part, through its agents, inflicts punishment upon those who set themselves against its commands — punishment that may extend not only to deprivation of property, but to corporal pain and even to death.

Supporters of the most antagonistic theories are able to agree in placing sovereignty at the foundation of the state.¹ Thus Hobbes asserts that men escape from anarchy into the protection of civil order by erecting “a visible power to keep them in awe.”² “And this,” says Locke, “puts men out of a state of nature into that of a commonwealth, by setting up a judge on earth with authority to determine all the controversies and redress the injuries that may happen to any member of the commonwealth, which judge is the legislative or magistrates appointed by it.”³ So also Kant describes the state as a union of men under one will that determines by law what shall be recognized as belonging to each subject, and secures this to him by a competent power distinct from his own personality.⁴ Similarly, Lasson defines the state as “a human community which possesses an organized highest authority as the supreme source of all compulsion.”⁵ And Bentham writes:

¹ Pollock, *Hist. of the Science of Politics*, p. 47.

² *Leviathan*, ch. xvii.

³ *Treatises on Govt.*, bk. ii, ch. vii, § 89.

⁴ *Philosophy of Law* (Hastie's trans.), pp. 161-164.

⁵ *Rechtsphilosophie*, p. 383.

When a number of persons (whom we may style subjects) are supposed to be in the habit of paying obedience to a person or an assemblage of persons, of a known and certain description (whom we may call governor or governors), such persons altogether (subjects and governors) are said to be in a state of political society.¹

We may, then, accept the doctrine that the political organization of the state is manifested in the permanent constitution of two organs that together include all its members, and that are characterized respectively by the functions of issuing commands and rendering obedience.²

4. Austin, in commenting upon the above-quoted passage from Bentham, observes that, considered as a definition of the state, it is defective in an important particular, namely, in omitting to mention the essential quality of independence.³ The presence of this note or mark, which Bentham neglected, is what especially differentiates a state proper from a mere limb of a state, such as a canton, a colony or a province, and entitles a political society to hold a place within "the family of nations."⁴

A civil community lacks the quality of independence when the ruling organ therein enters into the ruling organ of another civil community that embraces the first; or, since the relation just described necessarily involves the habitual obedience of the ruling organ in the smaller community to a superior part of the compound ruling organ of the greater, we may say, as Austin does, that a political society is non-independent when

¹ Fragment on Government, ch. i, § 10.

² See Kant, *Phil. of Law* (Hastie's trans.), p. 169; Puchta, *Outlines of Jurisprudence* (Hastie's trans.), p. 79.

³ *Jurisprudence*, vol. i, p. 240. The "independence" of the state is sometimes called its "external sovereignty," but inaccurately, because "sovereignty" imports the relation of superior and inferior, while normal states are under the "scepter of nature" only, and are theoretically equal. See Holland, *Jurisprudence* (1st ed.), p. 39; Maine, *Ancient Law* (3d Am. ed.), ch. iv, pp. 96-97; Clark, *Practical Jurisprudence*, p. 175.

⁴ Holland, *Jurisprudence* (1st ed.), p. 39. According to its technical meaning in international law, this term includes only the Christian nations of Europe and their offshoots in America, with the addition of the Ottoman Empire. *Op. cit.*, p. 267.

the ruling organ therein is habitually obedient to a determinate political superior. Thus the British colony of Victoria is not a person known to international law, because it is not independent: and it is not independent, because its internal ruling power is a constituent parcel of that vast complex, the ruling power or sovereign of the entire British Empire; or (adopting Austin's criterion) because its internal ruling power is constantly limited in the exercise of its functions by the commands of the supreme part of the ruling power or sovereign of the whole British Empire, namely, the sovereign power of Great Britain.¹

It is evident that the independence essential to the state is entirely consistent with the obedience yielded by civilized nations to the rules of international law; for these rules do not issue from a determinate political superior. They are laws of public opinion, not the commands of the sovereign power of a *magna civitas* or universal empire.² A political society whose ruling organ is ordinarily obliged by no other commands than those of public opinion has all the independence which a political society can possibly enjoy.

II. Having exhibited the state in its outward or mechanical aspect, as a numerous body of human beings permanently united by common inhabitation of a definite territory and by the establishment of an all-comprehending relation of sovereign and subject, and corporately possessing external independence, it now remains for us briefly to consider the state in its inward or organic aspect.

"Obedience," says Burke, "is what makes a government, and not the name by which it is called";³ and to this we may assent if by "government" is meant simply an independent political society. To constitute a true state, however, something must be superadded. For this there is required an

¹ On this subject, see Dicey, *Law of the Constitution* (1st ed.), pp. 95-109.

² "The development of international law, or the institution of a universal state (*Weltreich*), might organize the legal responsibility of nations. At present, this is only an ideal, which the future may perhaps realize." Bluntschli, *The Theory of the State* (trans. 1892), p. 509.

³ Speech on Conciliation with America.

obedience exacted with a regard to justice and the general happiness, and rendered in a corresponding spirit of spontaneous coöperation. The force of the sovereign must be directed according to right, and the observance of subjects transformed into duty.

As already shown, the institution of sovereignty is a condition absolutely essential to the appearance of the state. With its accomplishment civilization makes a prodigious stride: hordes crystallize into polities and anarchy gives place to regimen.¹ This is an achievement so vast that it seems to have well-nigh exhausted the political resources of the great bulk of the human race—the non-historical peoples of the world.² Some observers have been so impressed by its magnitude and significance that they have ignored the goal beyond. So Hobbes writes bare sovereignty as the last word in the philosophy of the commonwealth. For him, mere political organization is a consummate result. That his theory delivered men over to despotism, he deemed of no moment, since it sufficed to rescue them from the “perpetual war” of “every one against every one.”

We by no means attain to the full conception of the state by uniting to its other elements above discussed, the ingredient of political organization. Still another constituent must be brought in—one whose rejection would compel us to deny that there is anything radically distinctive in the peculiar product of the political genius of the historical nations, to include Asiatic autocracies³ and the barbarous monarchies of Africa under the category of the state, and to rank slaves as citizens. This final constituent is reached through a just apprehension of the purpose or end of the state, as contradistinguished from the independent political society.

¹ “It took thousands of years to accomplish it and exhausted the spiritual powers of all Asia in its accomplishment.” Burgess, *Political Science, etc.*, vol. i, p. 60.

² As to “stationary and progressive societies,” see Maine, *Ancient Law* (3d. Am. ed.), pp. 21, 23. For definition of an “historical” people, see Lavissee, *Political Hist. of Europe* (trans. by Gross), pp. 1, 2.

³ “Asia has produced no real states.” Burgess, *op. cit.*, vol. i, p. 60. See also Hearn, *Legal Duties and Rights*, p. 20.

Wherever sovereignty is chiefly a means of exploiting servient masses and is consequently for the most part founded upon supineness, habit and fear, there the state does not exist.¹ The state emerges when political organization becomes primarily an instrument for preserving the vital interests of its members, for securing their lives and liberties and fencing their great institutions of family, of property and of contract, and when, as a result, the bonds of civil cohesion upon which despotism must rely are supplemented by the nobler ties of patriotism, reason and active consent. Then the commands of the sovereign power assume a likeness to that ideal law which an ancient sophist figured as "an agreement and pledge between the citizens of their intending to do justice to each other,"² and which a modern philosopher describes as "the maintainer of the conditions to complete life in the associated state."³ The purpose or end, then, apart from which we cannot adequately conceive of the state, is, in the words of Dante, "liberty, to wit, that men may live for their own sake"; or according to Lord Bacon's expression, "*ut cives feliciter degant*."⁴ "For citizens," continues Dante, "are not for the sake of the consuls, nor a nation for the king: but contrariwise, the consuls are for the sake of the citizens, the king for the sake of the nation."⁵

In the rise and development of the state we see, on the one hand, the domination of the governing part of political society growing into harmony with ethical requirements, and, on the other, the submission of the governed more and more acquiring the nature of voluntary coöperation for the general advantage; the relation of sovereign and subject is gradually transformed by the spirit of solidarity.

¹ Governments, says Aristotle, that have in view only the good of the rulers, "are tyranny over slaves; whereas a city is a community of freemen." *Politics*, bk. iii, ch. 6, *ad fin.* Cf. Locke, *Treatise on Govt.*, bk. ii, §§ 90-94; Rousseau, *Contrat Social*, l. i. ch. 5.

² Lycophron, cited by Aristotle, *Politics*, bk. iii, ch. 9.

³ Spencer, *Political Institutions*, p. 537, § 535.

⁴ *Obs. de Princ. Juris*, § II.

⁵ *De Monarchia*, cited by Pollock, *Hist. of the Science of Politics*, p. 37. See Bryce, *The Holy Roman Empire*, pp. 265-267.

With genuine insight, Schopenhauer interprets this metamorphosis, considered in an aspect purely subjective and psychological, as the work of reason, that mounts from the one-sided and personal to the catholic point of view, whence it discerns the fundamental unity of man and recognizes that, in the total of humanity, the pleasure of inflicting wrong is always defeated and swallowed up by the suffering which is the necessary correlative thereof. Through this knowledge come the renunciation of injustice and the substitution for individualistic egoism of a collective or corporate "egoism of all."¹ So far as morally defensible, the state is an embodiment of this rationally transfigured or universalized egoism and exists to make it effective ; and hence it may be said that in the idea, as opposed to the concept, of the state, there is presented the complete ascendancy of the universal over the particular in man.²

II. *The Sovereign.*

In the course of the foregoing analysis it was asserted that the political organization of the state is manifested in the permanent constitution of two organs that together include all its members, and that are characterized respectively by the functions of issuing commands and rendering obedience. The first of these organs is the sovereign;³ the second embodies the subjects. Austin⁴ and Rousseau⁵ have made us familiar with the truth that when the sovereign is of plural structure, *i.e.*, "an aristocracy in the generic meaning," some of the members

¹ The World as Will and Idea (trans. by Haldane and Kemp), bk. iv, § 62, pp. 442, 443, 445, 451, 457.

² "By an Idea," says Coleridge, "I mean that conception of a thing which is given by the knowledge of its ultimate aim." Church and State, p. 10.

³ Sovereign is derived from the late Latin *superanus*. "*Sovran* appears to have come to our poets independently through the Italian *souvrano*." Clark, Practical Juris., p. 160, n. 11. "La Souveraineté, mot vague (né du latin du moyen-âge, de *superioritas*, *superanus*) et se prêtant facilement à des acceptions arbitraires. Cependant selon son véritable sens, le mot désigne un pouvoir qui décide dans son domaine en dernière instance, sans être soumis à cet égard à une autorité supérieure." Ahrens, Droit Naturel (8th ed.), t. ii, p. 362, § 110.

⁴ Juris., vol. i, p. 244.

⁵ Contrat Social., l. i, chap. vi.

of the state enter into the composition of both these organs, being "citoyens, comme participants à l'autorité souveraine, et sujets, comme soumis aux lois de l'état."

The sovereign into whose nature we are about to examine is the "political," not the so-called "legal" sovereign of the state. The legal sovereign is the formulator and announcer of the supreme commands that spring from the will of the political sovereign, and constitutes part of the government, as that will be hereafter defined. It is essentially a mandatory clothed with a measure of discretionary authority, while the political sovereign is the master. In idea, the two are clearly separable; but in fact, they occur in more or less intimate coalescence. Thus, in Great Britain the legal sovereign is the queen, lords and House of Commons; and the political sovereign consists of the lords and the electors of the House of Commons.¹ At Athens, during its golden age of direct democracy, the legal and the political sovereign were virtually merged in a single assembly.² The *Grand Monarque* was not, indeed, as he declared himself to be, the state; but he was both legal and political sovereign of the state.

The political sovereign of the state is that determinate person or number of persons therein, who, either by direct personal assumption of governmental functions, or by participation in elections for members of the government, or by both, in an open, established and regular manner control the action of the government, and through it express and carry out, if need be by force, commands generally obeyed by the bulk of the community.

In order to raise the conception of the sovereign into greater distinctness and properly to accentuate the salient points of this necessarily cumbersome definition, I shall briefly consider (1) the criteria of sovereignty, (2) its location, (3) some current misconceptions, (4) its three classical forms, (5) the principle

¹ See Dicey, *The Law of the Const.* (1st ed.), p. 69; Austin, *Juris*, vol. i, p. 253.

² Fowler, *The City-State*, p. 162 ff.; Bluntschli, *Theory of the State* (trans. 1892), pp. 460, 461.

underlying them, (6) its unity, (7) its limitations and (8) its mode of exercise.

1. The above definition shows that the possession of secret, disorderly or spasmodic power in political affairs falls short of a participation in sovereignty. For example, Madame de Pompadour was able to persuade Louis XV, and by her intrigues could send ministers "tumbling one after the other like the figures of a magic lantern"; still no constitutionalist would assign her other than a mere subject's place in the French political system of her day. Between the time of Pertinax and that of Diocletian a licentious soldiery set up and cast down more than a score of Roman emperors; but the empire was not thereby changed from a monarchy to a military aristocracy. Wat Tyler and his Kentish followers did not share in sovereign power, though for a moment they overawed the king and dictated royal charters.

Since the procedure that determines the sovereign is but threefold, appearing sometimes in the immediate exercise of supreme governmental functions by the sovereign, as in absolute monarchy; sometimes in the immediate exercise of a share of governmental functions by one or some of the elements of a composite sovereign and the employment of the suffrage by the remainder, as in Great Britain; and sometimes in the employment of the suffrage alone, as in France and in the United States:¹ it is plain that a resort to mere organs of public opinion, such as petitions, mass-meetings, demonstrations like those of Chartists and Coxeyites, the lobby and the press, for the purpose of exerting sway over government, even though not transcending constitutional bounds, does not of itself suffice to place any one among the constituent elements of the sovereign. Aliens, minors and women all use these agencies, but are never merely for this cause counted as part of the political people of the state.

Political power in its widest sense has the *differentiæ* neces-

¹ In its highest grade government is partly hereditary and partly elective in Great Britain, while in France and the United States it is wholly elective. See Burgess, *Political Science, etc.*, vol. ii, pp. 18, 19, 22, 23, 35.

sary to specialize it into sovereignty only when it manifests itself in commands generally obeyed throughout the state, and has in overt and definitely ordered correspondence with it governmental officers for the formal expression and execution of such commands — officers who, in so far as distinct from the person or body wielding the power in question, are the creatures and removable agents of that person or body.

2. The question where sovereignty resides is thus always one of fact, to be determined by an analysis conducted under the guidance of the criteria just indicated. Its location differs in different states, and, even in the same state, frequently shifts widely with the advance of time. Thus in the England of William the Red, when the king's justiciar, Ranulf Flambard, "drove and commanded his gemots" over all the land, and exercised his "malignant genius" in devising the most burdensome exactions of feudal law, the sovereign power had one depository, *viz.*, the Norman kingship;¹ but it had quite another in the England of William IV and Victoria, of Lord John Russell and Mr. Disraeli and the reform bills of 1832 and 1867.

3. Although generally adhering to the maxim, "*Rectum et sui index et obliqui*," I pause here for a moment to mark certain prevalent errors about the location of sovereignty, because in this way I can conveniently raise into clearer relief some of the points that have been brought out above.

It is often said that sovereignty in states characterized by a high degree of constitutional freedom,² belongs to or resides in "the people." Thus Pomeroy asserts that, according to the American theory, "sovereign power should be conceived as indivisible in its nature, and as appertaining to the totality of the members of the body politic — to the entire people."³ "In

¹ Montague, *Elements of Eng. Const. Hist.*, p. 25; Goodnow, *Comparative Adm. Law*, vol. i, pp. 97, 98. See Burgess' views on the "three great revolutions in the political system of Great Britain," *op. cit.*, vol. i, pp. 92, *et seq.* Stubbs, *Const. Hist. of Eng.*, vol. i, p. 338.

² *I.e.*, a system in which "the private members of the community exercise an effective control over the government." Sidgwick, *Elements of Politics*, p. 362.

³ *Const. Law*, p. 5, pp. 28, 29.

America," writes Cooley, "the leading principle of constitutional liberty has from the first been, that the sovereignty reposed in the people."¹ The incorrectness of these views is demonstrable. For sovereignty, however widely democratized, never belongs to more than a minority of the members of the state. Women as a class only here and there share appreciably in it, and children are excluded from it; but women and children together make up the bulk of the population of every independent political community. Of course, it is easy to imagine a civil society entirely composed of adults of sound mind, who all participate in the direction of the government in the ways above specified. But nowhere outside of such a Utopia does sovereignty reside in "the people."

The error just noticed is palpable. More misleading and harder to expose is the false doctrine contained in the proposition that "the state as a person is sovereign and therefore we speak of the sovereignty of the state (*Staatssouveränität*)."² This is the teaching of Bluntschli,² and also of those who say, as Hearn does, that positive law is "the command of the state or politically organized community."³

Reflection discloses that since the sovereign is a source of command and compulsion, sovereignty cannot actually appertain to the state regarded as an artificial person. Every true command is the expression of a desire touching the observance of a mode of conduct, backed by a purpose of punishing disobedience. But surely, supramundane existences aside, such desire and purpose can only arise in natural persons, that is, in real human beings. The personality of the state is merely "a sort of personality."⁴ Strictly speaking, the state, as a distinct entity, has no psychology, and is incapable of entertain-

¹ Principles of Const. Law, p. 23. But see Cooley, Const. Lim., p. 29, where it is said that "as a practical fact, the sovereignty is vested in those persons who are permitted by the constitution of the state to exercise the elective franchise."

² The Theory of the State (trans. 1892), p. 500.

³ Legal Duties and Rights, p. 17.

⁴ According to Bluntschli, the state has not only personality but also gender; it is an "organized masculine personality" (*der Mann*). The Theory of the State (trans. 1892), pp. 23, 24, n. 2.

ing motives or of exercising volition. Much of what we read nowadays about the "organism of the state," about "group psychology" and "group will," approaches that mysticism in law and politics which Austin, with perhaps excessive acerbity, was wont to term "jargon" and "fustian." At best, these expressions are a perilous kind of figurative language. The so-called will of the state (*Staatswille*), command of the state and sovereignty of the state are at the bottom nothing else than the will, the command and the sovereignty of some member or members of the state.¹ Political science cannot be founded on metaphor. It must discard fictions and seek to reach the facts as in themselves they really are.

Still more extravagant in their aberrance is the class of writers who divorce sovereignty from every semblance of personality, urging with abundance of fervid rhetoric that the true sovereign is reason, justice, ideal law. "The voice of humanity," declares Guizot, "has proclaimed that the right of sovereignty vested in man, whether in one, in many or in all, is an iniquitous lie."² "Justice then is sovereign," says Royer-Collard, "because justice is the rule of right. The purpose of free constitutions is to dethrone force and to make justice reign."³

In the preceding chapter I took pains carefully to mark that the independent political community does not rise to the level of the state until its sovereign, withstanding the impulses to arbitrariness that result in despotism, acts largely in accordance with ethical requirements. This, however, does not satisfy theorists of the romantic school of Guizot. Animated by hatred of tyranny, and full of enthusiasm for the right, they rush into "the error of ideocracy."⁴ Because the sovereign of the state habitually proceeds in conformity with the method of reason or justice or ideal law, they maintain that reason or justice or ideal law rules in the state. Thus they lose the

¹ See Taylor, *The Right of the State to Be* (Ann Arbor, 1891), pp. 28-36.

² *Representative Govt.* (Bohn's ed.), lect. vi, p. 59.

³ Quoted by Bluntschli, *op. cit.*, p. 499, n. 3.

⁴ *Ibid.*, p. 500.

operator in the *modus operandi*, and conjure up a sovereign without personality, devoid of will and of force,¹ a futile abstraction, disowned alike by sound political philosophy and by historical fact.²

4. Differences in the number of persons from whom the superior manifestations of sovereign power proceed give rise to the three classical forms of the sovereign. I say "superior manifestations"; for it must be noted that these forms do not depend solely upon whether the number exercising sovereignty be one, few or many: they depend also upon the grade of sovereignty so exercised. In a state, therefore, where government in its higher and wider action is directed exclusively by one or a few, the sovereign is monarchic or aristocratic, even though at the same time government in its petty and merely local or communal action is directed by the many.³ Accordingly, when the sovereign power of directing the higher and wider action of government is resident in a single member of the state, the sovereign is monarchic; when it pertains to a number of members that

¹ Rousseau, with all his sentimentalism, did not dream of divesting the sovereign of force: "Quiconque refusera d'obéir à la volonté générale y sera contraint par tout le corps; ce qui ne signifie autre chose, sinon qu'on le forcera d'être libre." *Contrat Social*, l. i, ch. viii. On the other hand, Pascal's pessimism hindered him from recognizing the element of justice in the sovereignty of the state, and he attributed to it force alone: "Ne pouvant faire que ce qui est juste fût fort, on a fait que ce qui est fort fût juste." *Pensées*, Art. xv, § 17.

² In his work on Sovereignty, Bliss says: "That reason, that justice, in civil administration is our only sovereign, is more than a metaphor; the idea commands more than speculative approbation. As the suzerain *could* command the homage, the obedience of his subjects, so reason, so justice *should* command the homage, the obedience of society." Later, he quotes with approval the following passage from James Wilson's lectures: "As to human laws the notion of a superior is a notion unnecessary, unfounded and dangerous—a notion inconsistent with the genuine system of human authority." It is political science of this sort that makes us turn to what Pollock calls "the stern limitations and the crabbed analysis" of Austin, not merely with patience, but with a lively feeling of gratitude. With perfect concinnity Professor Bliss has produced a treatise on "Sovereignty" for the purpose of showing that in what he calls the federal state, at least, sovereignty has no existence, and that the word should be expunged from the vocabulary of politics (ch. xii).

³ Thus in Russia the form of the sovereign is monarchic, notwithstanding the fact that in the village communities, containing about five-sixths of the population, the heads of households exercise an inferior grade of sovereignty.

is small relatively to the whole adult population, the sovereign is aristocratic; when it pertains to a number of members that is considerable or large relatively to such population, the sovereign is democratic.

To illustrate: early in the third century Ulpian wrote the famous sentence, "Quod principi placuit, legis habet vigorem," and thus correctly pointed out the monarchic character of the then existing sovereign in the *Orbis Romanus*. At that time there remained only a trace of the political hypocrisy inculcated by the "maxims of Augustus." The forms of popular legislation had long since ceased to be observed. The senate, once an "assembly of kings," whose authority held the highest magistrates in subservience to its will, had sunk into a mere tool of the principate, and the emperor no longer hesitated openly to appear — what from the first he had been in almost all but seeming — the sole *dominus* of every agency of public rule. Again: whatever may have been the character of the sovereign power in England at an earlier period, during the fifteenth century it definitely assumed an aristocratic type, as the result of the severe restriction of electoral privileges which was then effected;¹ and this character it retained, despite the Tudor reaction toward absolutism, on the one hand, and the attempt under Cromwell's Instrument of Government and the efforts of Chatham, on the other, until the diffusion of the right of voting that followed the Parliamentary reforms of 1832 and 1867. Finally: democratic sovereignty is exemplified by the United States, Great Britain and the German Empire; for in each of these states the control over the culminating elements of their respective governmental systems is shared by a very large proportion of the mature male population. In the United States such persons possess proximately equal constitutional means of making themselves felt throughout the upper ranges of government; while in Great Britain, and much more in the German Empire, such persons possess unequal constitutional means of making themselves thus felt. In the Empire, for instance, there is a vast difference between the mere elector, who can only send

¹ Hannis Taylor, *The Eng. Const.*, I, 527, 575; May, *Const. Hist.*, II, 460, 461.

his "twenty-thousandth part of a talker to the national palaver" of the Diet, and the *Kaiser*, with his many voices in the Federal Council. Sovereignty, however, is democratic, not through the equipollence, but through the relative numerousness of those who join in wielding its superior grades of power.

5. At first glance there seems to be validity in the criticism that the principle underlying the three classical forms of the sovereign is merely arithmetical; that it is inexpressive of any significant fact or force, and hence is shallow and unfruitful. Schleiermacher has successfully vindicated the genuine scientific import of the classification.¹ Although these forms depend immediately upon differences in the number participating in the superior grades of power exercised by the sovereign, they are founded ultimately upon the degree of the extension of "political consciousness" among the members of the state. The phrase political consciousness, though of frequent occurrence, has not attained a fixed meaning. I employ it here to denote a rational apprehension of the rôle played by government in civil society, coupled with a permanent desire to bear a part in determining the modes and ends of its action. To possess political consciousness, then, is to have an understanding of what is and can be effected through the instrumentality of government, and a settled wish to share in its working. It is in consequence of the development of political consciousness in breadth and intensity that sovereignty has displayed a tendency to assume, after the monarchic, the aristocratic and then the democratic form.² I say "tendency," because this transformation has by no means gone on in steady correspondence with the increase of its cause, but has usually lagged behind — not seldom very far behind. Nevertheless, the constitutional history of the progressive nations discovers plainly enough the law that, sooner or later, political consciousness objectifies itself in appropriate civil institutions: no part of the population in which it is strongly developed ever fails, in the

¹ For a brief *résumé* of Schleiermacher's views, see Bluntschli, *The Theory of the State* (trans. 1892), 335-337.

² See Puchta, *Outlines of Juris.* (trans. by Hastie), 80, 82; Maine, *Ancient Law* (3d ed.), 11.

end, to grasp a material share of sovereignty in the state. The present condition of the woman suffrage movement shows that the greatest obstacle to the attainment of the full privileges of citizenship by women, is the feebleness of their political consciousness. What Bryce has said of them, with the United States especially in mind, is equally true as to all highly civilized countries: "The suffragists have some ground for the confidence of victory they express. If they can bring the public opinion of women themselves over to their side, they will succeed."¹

6. That the sovereign is necessarily single, is a commonplace in discussions upon the theory of the state. Hobbes, for example, affirms that there is a "doctrine plainly and directly against the essence of the commonwealth; and it is this, that the sovereign power may be divided. For, what is it to divide the power of a commonwealth but to dissolve it; for powers divided mutually destroy each other."² Let us, then, consider briefly the nature of this unity, the grounds of its necessity and the conditions of its realization.

It is seen at once that this unity does not require that the sovereign should consist of a single person only. What it does require is that, when the sovereign includes a number, they should act in the performance of the function of the sovereign as if they were one; or, in a word, should constitute a functional whole. The requisite unity of the sovereign is revealed from the standpoint of its outcome. It must have the inherent capacity of originating a performable body of commands, instead of a *mélange* of "cross and cuffing"³ injunctions. Obviously this capacity could not belong to two or more mutually unrelated centers of authority attempting to exercise full sovereignty throughout the same community. Again, there can be no real civil organization, no true relation of sovereign and subject, without general obedience on the part of the ruled.

¹ American Commonwealth, II, 448.

² Leviathan, ch. xxix.

³ King James's address to Parliament in 1609. See *Westminster Review*, CXXI, 458.

But in a society exhibiting political superiors entirely independent in their operation, so that chance only would prevent their commands from falling into constant collision, general obedience would be inconceivable. "Nullus homo potest duobus dominis servire."

By implication, the conditions of the functional unity of the sovereign have already been pointed out. When the sovereign is an individual, the requisite oneness is an inevitable result of its uncompounded character. When the sovereign embraces a number, this oneness depends upon organization. Its elements are so coördinated, or so coördinated and subordinated, that their joint working creates for the subjects in the state a feasible scheme of legal duties — one that, translated into conduct, appears as a veritable civil order.

A most notable illustration of the kind of organization above described is furnished by the United States, where the possession of the political franchise indicates the constituents of the sovereign. Here millions of voters are associated in very numerous collegiate aggregates of widely varying degrees of compositeness, each of which aggregates has in correlation with it, and subject to its control, a determinate part of the machinery of government, both legislative and administrative. These aggregates, in spite of their vast multiplicity and their great differences in structure and in range and importance of power, are all made to coöperate in the accomplishment of the end for which the sovereign exists by means of an elaborate set of constitutional adjustments, according to which each aggregate, with its corresponding governmental apparatus, has an orbit of jurisdiction or functional competency separate from, and at the same time complementary to, that of every other aggregate. Thus, paramount grades of sovereignty are exercised by the highly compounded aggregate that controls the governmental apparatus whose action is required for the amendment of the federal constitution; lower grades are apportioned to the aggregates that respectively determine the federal government and the several commonwealth governments; and still inferior grades are allotted to those aggregates that direct the operation

of local government in counties, townships and municipalities. The unity of the sovereign effected by this organization is such that, disregarding minor flaws, there is established for each subject of the state a harmonious and practicable system of positive legal rules, *i.e.*, one that does not expose him to contradictory, and hence impracticable, demands. "The American citizen," says Macy, "lives under not less than five institutions called governments."¹ This is an under-statement, rather than an over-statement, of the truth. Nevertheless, the citizen's positive legal duties are as certain as are those of a subject of the Russian Czar. The devices employed to this end are like those of a "great factory wherein two [one might say six or seven] sets of machinery are at work, their revolving wheels apparently intermixed, their bands crossing one another, and each doing its own work without touching or hampering the other."²

7. It has been erroneously asserted that the sovereign is omnipotent. The doctrine that the sovereign has the "power of compelling the other members of the community to do exactly as it pleases," and of putting "compulsion without limit on subjects or fellow-subjects," has been attributed to Austin by various authors.³ Austin, however, did not accept it⁴ any more than did his predecessors, Bodin⁵ and Locke,⁶ and, considering its palpable extravagance, one cannot easily see how it ever found place in the books.

In a thousand directions sovereignty is effectually abridged by the force of public opinion. Thus, it is limited by the operation of international law, which embodies public opinion in its most august and imposing, if not its most drastic, form.

¹ Our Government, p. 1.

² The American Commonwealth, vol. i, p. 318.

³ See Maine, Early History of Insts. (N. Y., 1875), pp 349, 350; Crane and Moses, Politics, p. 38.

⁴ POLITICAL SCIENCE QUARTERLY, IX, 31 *et seq.*

⁵ Bodin "tells us of organic laws or rules which may be so closely associated with this or that sovereignty that they cannot be abrogated by the sovereign power itself, and he instances the rule of succession to the French crown." Pollock, Hist. of the Science of Politics, p. 51.

⁶ Locke, Treatises on Govt., bk. ii, ch. xi.

At a juncture when the cardinal unifying influences of the middle ages were fast failing, when feudalism as a political system was hopelessly discredited, when the Reformation had broken the sword of the Pope, and the sword of the Emperor had become a mere phantom, the labors of Ayala, Gentilis, Suarez and, preëminently, of Grotius formulated a body of rules bearing upon the mutual dealings of states which made swift conquest of the intelligence and conscience of Europe¹ and presently thereafter began to produce a sensible effect in the region of practice and history. Although it is true, as Lavissee declares, that "all these fine maxims, without a single exception, were flagrantly violated by the various governments, without a single exception,"² nevertheless it has come to pass that this seemingly flimsy code of public opinion, without a recognized organ of legislation, without an acknowledged tribunal, without definite sanctions, has succeeded in winning an authority which the most puissant of modern nations would not dare formally to repudiate. To-day, none of its established precepts is openly scorned, and many of them receive an obedience as constant as that accorded to the injunctions of positive law by the members of orderly commonwealths.

But, in addition to the constraint put upon it by international law, the power of the sovereign is always dependent also upon the subordination of the subjects, which is itself limited.³ As Dicey well says:

It would be an error to suppose that the most absolute ruler who ever existed could in reality make or change every law at his pleasure. . . . This is shown by the most notorious facts of history. None of the early Cæsars could, at their pleasure, have subverted the worship or fundamental institutions of the Roman world, and when Constantine carried through a religious revolution his success was due to the sympathy of a large part of his subjects. The Sultan could not abolish Mohammedanism. Louis XIV, at the height of

¹ Maine, *Ancient Law* (3d Am. ed.), p. 106; Bluntschli, *Das Moderne Völkerrecht* (Nördlingen, 1878), § 17.

² *Polit. Hist. of Europe* (trans. by Gross), p. 85.

³ See Stephen, *the Science of Ethics*, p. 143.

his power, could revoke the Edict of Nantes, but he would have found it impossible to establish the supremacy of Protestantism, and for the same reason which prevented James II from establishing the supremacy of Roman Catholicism.¹

According to the conception of sovereignty I am here presenting, the measure of truth to be found in the doctrine of the omnipotence of the sovereign is this: when the sovereign organ is a monarch, *stricto sensu*, or a body taken integrally, it cannot be bound by the obligation of positive law; and the same is true of the paramount portion of a sovereign organ composed of parts exercising different grades of authority. This is a mere corollary of the definition of positive law—a command of a *superior bearing the marks of sovereignty*. Obviously there can exist in the state no such superior over either of the three varieties of ruling power described above. Thus, the Sultan of Turkey cannot be trammelled by any bonds of positive law; neither could the Roman *nobilitas* as it appears in the later books of Livy and during what has been called the period of the “perfection of oligarchy” at Rome;² nor can the supreme portion of the vast composite sovereign power of the entire British Empire, *viz.*, the lords and the electors of the House of Commons. It is clear, however, that limitation by positive law is quite possible in the case of the subordinate portions of a composite sovereign organ, because for such subordinate portions there exists a superior characterized by the notes of sovereignty. Accordingly, we see that the part-sovereigns of the colony of Victoria and of the Dominion of Canada are restrained by positive laws which they cannot change, and which are changeable only by the culminating portion of the sovereign of the whole Brit-

¹ The Law of the Const. (1st ed.), pp. 70, 71, 72.

² At this time, not theoretically, but actually, the *nobilitas* was the sovereign power of Rome. See Fowler, The City-State, p. 220. The chief governmental instrument of this sovereign *nobilitas* was, of course, the senate. *Id.*, pp. 230 ff. The senate, in turn, controlled the magistrates, and the magistrates the assemblies. Tighe, Development of the Rom. Const., p. 127. See Freeman's Historical Essays, vol. iv, pp. 410 ff.

ish Empire regarded as a single state. Likewise the sovereign people of the several commonwealths of the United States are, as such, subject under positive law to that highest sovereign people to whom is committed the function of constitutional amendment.

8. It must be noted that in states having a sovereign of plural form the action of government is not controlled by the whole sovereign number, but only by parts, and that, therefore, in such states positive law is not the command of the entire sovereign, but merely of certain of its components. There is, however, more general concurrence than at first glance appears. I think that we shall not fairly be chargeable with super-refinement, if we maintain that all the members of a sovereign aggregate, by their voluntary coöperation in that capacity, do really assent to every positive law formulated and enforced by the government which that aggregate constitutionally determines. Knowing that disagreements are inevitable, every sensible person belonging to a sovereign body desires that less than all should have the power of effectual governmental control, the alternative being deadlock, or anarchy more or less pronounced.

To the extent here indicated, there is reality in Rousseau's contention that every true law is an expression of the *volonté générale*. On close examination Rousseau's "general will" proves to be but the will of a greater or smaller majority of the voters who compose the sovereign, rendered under such conditions of voluntary coöperation that it necessarily bears along with it the tacit, though real, assent of the apparently opposed minority. The majority desire the measure passed, *specifically*; the minority, *compendiously*, as wishing, first of all, in common with the whole body of citizens, the maintenance of the principle of majority rule. Where unanimity is wanting, the will of the strongest must prevail, or else the law must be committed to the weaker party and thus devoted to desuetude and death. In exercising the right of suffrage, says Rousseau, "each elector takes part in a proceeding for the discovery of the general will. When an opinion contrary to mine prevails,

that only shows that I was mistaken, and that what I thought to be the general will was not."¹

Nor is Rousseau's view repugnant to the current and popular way of thinking. I deem myself not less a legislator than my neighbor, though his party, and not mine, has ruled the councils of the state for half a century. His opportunity is not my effacement. As Locke puts it, in a passage of which the matter leaves less to be desired than the manner:

That which acts any community being only the consent of the individuals of it, and it being a body, must move one way; it is necessary the body should move that way whither the greatest force carries it, which is the consent of the majority, or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it agreed that it should; and so every one is bound by that consent to be concluded by that majority.²

Doubtless one cause of this acquiescence is acceptance of the doctrine that at bottom power and right are coincident. This belief, which the eloquence of Carlyle has most persuasively advocated on its historical side, has on its philosophical side received a vigorous support at the hands of the late Professor Lorimer in his *Institutes of Law*, and is by no means devoid of justification by the "world historical judgment"³ and the "long result of time."

III. *The Government.*

There is no cause for surprise that the difference between the sovereign and the government has only in recent times been clearly apprehended. Early observers of the phenomena

¹ *Contrat Social*, l. iv, ch. 2.

² *Treatises on Gov.*, bk. ii, ch. viii, § 96. The poverty of Locke's influence as a political writer, compared with the wide domination of Rousseau, is largely due to the painful lack of literary style in the former's work, and well illustrates Émile Deschamps's axiom: "La forme n'est rien, mais rien n'est sans la forme."

³ "Die Weltgeschichte ist das Weltgericht"; said first by Schiller in a poem called "Resignation." See Bluntschli, *The Theory of the State* (trans. 1892), pp. 266, n. a.

of politics, confronted by the city-states of antiquity, saw the sovereign and the government in complete, or nearly complete, coalition. They wanted suitable objective aids to the making of this important discrimination. Likewise, the observers who wrote after the study of politics had revived from the sleep of the middle ages, found themselves almost everywhere, except in England, surrounded by absolute monarchies, and in these they beheld the *personnel* of the sovereign completely merged in that of the government. Here, too, were lacking "the proper external occasions for the excitation of thought." It was left for Bodin, and later Rousseau, firmly to grasp and clearly to set forth this neglected distinction. They have been followed in our country by Pomeroy¹ and Burgess.² It is the fashion nowadays to depreciate Rousseau; I think, however, that he has treated this subject justly and luminously, and therefore I substantially adopt what he says in the first chapter of the third book of the *Contrat Social*.

The public force, says Rousseau, requires an agent to concentrate it and set it to work according to the directions of the general will — to serve as a means of communication between the state and the sovereign, and to effect in the state something analogous to what the union of soul and body does in a man. This agent is the government, often unfortunately confounded with the sovereign, whose minister it is. It transmits to the people the sovereign's commands and sees to it that they are obeyed. The government is composed of simple officers of the sovereign, who exercise in its name the power of which it has made them the depositories, and which the sovereign can limit, modify and resume at pleasure. Nevertheless, the government has a real separate life, *un moi particulier*,³ a certain discretionary authority of its own, — the authority, we may say, of the expert,⁴ — which serves to distinguish its members from mere official assistants, such as clerks, inspectors, revenue collectors, *etc.*,

¹ Constitutional Law, p. 28.

² Political Science, *etc.*, vol. i, pp. 69 *et seq.*

³ *Contrat Social*, l. iii, ch. i.

⁴ See as to this analogy of the "expert," Sidgwick, *Elements of Politics*, pp. 587, 588.

and the still humbler functionaries like lacqueys, porters and policemen.¹

Passing by the ancient separation of governments into monarchies, aristocracies and democracies, as presenting nothing that need detain us, we come directly to the differentiation of government into legislative, executive and judicial branches, according to variations in the functions performed by its component elements. The importance of this division of labor to the existence of civil liberty was most powerfully urged by Montesquieu in his celebrated *Esprit des Lois*.² "Si la puissance de juger," he writes, "était jointe à la puissance législative, le pouvoir sur la vie et la liberté des citoyens serait arbitraire." This view was afterwards adopted by Blackstone in his no less famous *Commentaries* and by Paley in his *Moral Philosophy*, and it found vigorous expression in the work of American constitution-makers.³

Montesquieu based his notion upon a study of the free constitution of England, but his observations were entirely erroneous.⁴ Liberty does not depend upon "the separation of powers," because this separation does not exist either in England or elsewhere. Locke vaguely intimated the truth on this point,⁵ and Madison expressly declared it in the *Federalist*:

On the slightest view of the British constitution we must perceive that the legislative, executive and judicial departments are by no means totally separate and distinct from each other. . . . If we look into the constitution of the several states, we find that notwithstanding the emphatical, and in some instances the unqualified, terms in which the axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct.

The most that can be averred without impeachment is, that in

¹ Bluntschli, *The Theory of the State* (trans. 1892), pp. 527, 528.

² L. xi, ch. vi. See Crane and Moses, *Politics*, p. 195.

³ See, for example, the Massachusetts Bill of Rights. As to the influence of the *Esprit des Lois* on American statesmen, see Bryce, *American Commonwealth*, I, 26.

⁴ Goodnow, *Comp. Adm. Law*, vol. i, pp. 19-24.

⁵ *Treatises on Govt*, bk. ii, chs. xii, xiv, §§ 148, 159.

the main executive powers are exercised by the executive, judicial powers by the tribunals and legislative powers by the legislature; and that this partial specialization of functions is useful, and has generally been adopted in the actual constitutions of modern states.¹

For the sake of brevity, let us confine our attention to the exercise of the law-making function by the three divisions of government, drawing our illustrations from the United States, France and England. In the United States the chiefs of the eight great executive departments constantly promulgate rules for the direction of their subordinates — rules in whose origination Congress has no part except upon the theory that what a political superior permits, — what he might, but does not change, — he enjoins. The English cabinet, while commanding the full powers of the crown,² in which the older, classical commentators upon the British constitution placed the entire executive force of the nation,³ at the same time formulates all government bills and controls the entire course of the legislative processes of Parliament. But the cabinet is made up entirely out of the *personnel* of the two houses, being, in Bagehot's view, "a board of control chosen by the legislature, out of persons whom it trusts and knows, to rule the nation." Again he calls it "a hyphen which joins, a buckle which fastens, the legislative part of the state to the executive part of the state."⁴ Every reader of Mr. Dicey's remarkable book on the *Law of the Constitution*, is acquainted with the vast extension of the *droit administratif* in France, which is distinctly a creation of executive functionaries.⁵

The part played in the making of law by English tribunals and those of English origin and mould, is less obtrusive, because their judges and lawyers, as if guiltily conscious of encroachment upon territory appropriated to another, constantly shroud their legislative operations in formulas of mere

¹ Sidgwick, *Elements of Politics*, p. 345.

² Burgess, *Political Science, etc.*, vol. ii, p. 213.

³ Blackstone, *Commentaries*, vol. i, p. 249.

⁴ *The English Const.* (N. Y. 1893), pp. 81, 82.

⁵ *The Law of the Const.* (1st ed.), p. 196 ff. See also p. 187.

legal interpretation. Nowadays these tribunals do not, indeed, go so far as the English mediæval courts, which, in *Taltarum's Case*, for instance, ventured virtually to repeal a great statute of nearly two centuries' standing;¹ or so far as the chancellors who created the equitable doctrines of trusts and mortgages in the teeth of the common law:² but, day by day, through "spurious interpretation" and clear innovation they still eat away old rules of law and keep supplying new ones.

The question has been raised, whether, in modern representative democracies, the law-making parts of government can fairly be regarded as "ministers" of the sovereign in the performance of their functions. In agreement with Rousseau, it was conceded that the legislature has a measure of discretionary authority, "*un moi particulier*;" and the only doubt is, whether this authority is wide enough to confer what may justly be called independent power. Of course, we have nothing to do here with a discussion of how it ought to be, or how it is in ideal states. That is a matter of "deontology," as Bentham calls it — of *morale*, not of analytical or theoretical, as opposed to practical, politics. It is mainly from this rejected standpoint that the subject has been treated by Mill in his *Representative Government*, by Sidgwick in his recent *Elements of Politics* and by a host of other writers.

In order to confine our inquiry to the smallest possible space, let us consider this matter especially with reference to the two leading democracies of the world, England and the United States. It will be worth while to note some leading opinions upon the relation that actually exists, and continually tends to fuller existence, between the legislature and the sovereign power in these two countries.

According to Dicey,

the essential property of representative government is to produce coincidence between the wishes of the sovereign and the wishes of the subjects. . . . This, which is true in its measure of all real rep-

¹ Statute De Donis Conditionalibus, 13 Ed. I, ch. i (1285). See Digby, *Hist. of the Law of Real Prop.* (2d ed.), pp. 220–223. This occurred in 1472. Monahan calls it "a piece of solemn juggling." *Method of Law*, p. 14.

² Digby, *op. cit.*, pp. 333 ff.; pp. 250 ff.

representative government, applies with special truth to the English House of Commons.¹

Burke called the House of Commons "the express image of the feelings of the nation."² Austin says:

Speaking accurately, the members of the commons' house are merely trustees for the body by which they are elected and appointed; and, consequently, the sovereignty always resides in the king and the peers with the electoral body of the House of Commons. That a trust is imposed by the party delegating, and that the party representing engages to discharge the trust, seems to be imported by the correlative expressions *delegation* and *representation*.³

Burgess maintains that "the suffrage-holders, when electing a House of Commons upon the issue of a new governmental policy, are in the British system the state [sovereign]," of which the cabinet is "the immediate representative."⁴ "Towering over presidents and state governors," declares Bryce, "over congress and state legislatures, over conventions and the vast machinery of party, public opinion stands out in the United States as the great source of power, the master of servants who tremble before it."⁵ "A steady opposition to a formed public opinion," says Bagehot, "is hardly possible in our House of Commons, so incessant is the national attention to politics, and so keen the fear in the mind of each member that he may lose his valued scat."⁶

If the passages above quoted are not so applicable to the relations subsisting between the sovereign and the legislature in the representative systems of France, Germany and Italy, this seems due to the fact that the electorates in these countries are masters merely less alert and less exacting,—to a sort of hebetude, a languid political consciousness, that springs from deficient practice and discipline in the art of local self-

¹ The Law of the Constitution, p. 78.

² Cited by Wilson, Congressional Govt., p. 227.

³ Jurisprudence, vol. i, p. 253.

⁴ Political Science, *etc.*, vol. ii, p. 215. See also Montague, Elements of English Const. Hist., pp. 214, 215.

⁵ The American Commonwealth, vol. ii, p. 255.

⁶ The English Constitution (N. Y., 1893), p. 309.

government, rather than to any essential defect in their powers of sovereignty.

Some writers lay too much stress upon the circumstance that representatives are generally uninstructed.¹ But they are not uninformed concerning the wishes of their constituents, or about the penalty attached to a disregard of these wishes. There has been no need of formal instructions to insure that Louisiana Congressmen should vote for a tariff on sugar, California Congressmen against generous treatment of the Chinese, or Southern statesmen for the repeal of the federal election laws. That the trust conferred is enforceable only by moral and political sanctions, is quite immaterial to the point at issue. Upon the sovereign agency employed to make this trust binding we have already dwelt. It has never been better indicated than in the protest of the Lords when the English Parliament, in 1716, prolonged its duration, without popular mandate, from three to seven years. Thereby their constituents, the protesting peers declared, were "deprived of the only remedy which they have against those who either do not understand, or through corruption do wilfully betray, the trust reposed in them, which remedy is to choose better men in their places."²

Coming now to a consideration of the sovereign's directive power over the law-making function of the courts, it must be granted that the latter enjoy a larger degree of immunity from interference than does the legislature. Still even here the hand of the sovereign is not so shortened as to lose its ability to control. In the United States the tenure of the law-making judges is indirectly, where not directly, elective, and there is generally manifested a growing tendency to increase the judges' sense of responsibility to the sovereign by shortening their terms of office, and making their appointments depend upon direct popular choice.³ Moreover, along with the prodigious

¹ The principle of instructed representation finds expression in the German Federal Council (*Bundesrath*). This is disapproved by Prof. Burgess on the ground that "the *will* of a constituency has no place in the modern system of representative legislation." *Op. cit.*, vol. ii, p. 116.

² Thorold Rogers, *Protests of the Lords*, vol. i, p. 228.

³ This policy, which was begun by Georgia, has been adopted by a majority of the states. Macy, *Our Government*, p. 104.

activity characteristic of modern legislatures proper, has naturally gone a restriction of the scope of the law-creating power of the courts. The judge is restrained from innovations by the knowledge that there is a restless and lynx-eyed legislature ready to pounce upon and nullify them. Even the judgments of the Supreme Court of the United States are subject to disallowance by the sovereign, as the Dred Scott Case was set aside by the Fourteenth Amendment. Furthermore, courts can be kept in subservience to the popular will through the action of the legislature in augmenting the number of their members, in depriving them of jurisdiction, or in abolishing them altogether; and the history of this country exemplifies all these extraordinary means of control. The result has been admirably summed up by Wilson in the following passage:

Indeed it may be truthfully said that, taking our political history "by and large," the constitutional interpretations of the Supreme Court have changed, slowly but not the less surely, with the altered relation of power between the national parties. The Federalists were backed by a Federalist judiciary; the period of Democratic supremacy witnessed the triumph of Democratic principles in the courts; and Republican predominance has driven from the highest tribunal all but one representative of Democratic doctrines.¹

If, now, we should turn our attention to the other modern free states, we should, I believe, be able to trace in them essentially the same dependency of the legislating parts of government upon the sovereign which has been marked in the cases of England and the United States.

To summarize the results of this long inquiry in the briefest possible formula, it may be said that, regarding our triad of conceptions from the standpoint of jurisprudence and in their relations to positive law, the state is the theater of positive law — the stage on which it plays its beneficent rôle of civil order; the sovereign is the commander of positive law; and the government is the formulator and administrator of positive law.

CHARLES MALCOM PLATT.

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¹ Congressional Government, p. 37 (written in 1884).

REVIEWS.

The Evolution of Modern Capitalism. A Study of Machine Production. By JOHN A. HOBSON, M.A. London, Walter Scott; New York, Charles Scribner's Sons, 1894.—383 pp.

At a time when the air is surcharged with anti-capitalist sentiment and the press is constantly turning out quasi-socialistic productions, it is encouraging to take up a book which even aims to consider modern capitalism in a scientific spirit. Mr. Hobson starts out well and for the first four chapters hews closely to the line of scientific discussion. His treatment of the order and development of machine industry is very interesting both historically and economically. He finds little difficulty in showing that the growing differentiation and integration of machine industry is highly beneficial to all classes in society.

But when the author reaches the question of trusts, which he insists are monopolies, he fails to maintain his otherwise high standard of economic criticism. He very properly lays great stress upon the importance of maintaining the competitive principle in order that the community may get the advantage of improved processes developed by integrated capital. But he clings altogether too closely to the narrow early English view of competition. He seems to mistake number of competitors for efficiency of competition, and ignores the force of potential competition—the competitive influence of capital that is ever waiting to step in where large profits warrant the risk. In modern society, this potential competition is often more effective than the actual competition of small competitors.

In his readiness to assume that aggregations of capital under the name of trusts are monopolies which suspend all competition, Mr. Hobson drops into a regrettable laxity of statement and of reasoning. He selects the Standard Oil Company as a typical specimen of the trust. In this he is entirely right; there is probably no better illustration of the trust principle anywhere than the Standard Oil Company. But Mr. Hobson is quite unfortunate in both the selection and the interpretation of facts in the case. As a typical illustration of what the Standard Oil Company has done he recites at great length the story of the so-called South Improvement Company as if it were a veritable organization. He seems not to know that this South Im-

provement Company never had any real existence ; that it never did a dollar's worth of business ; that it had absolutely nothing to do with regulating railroad freights or the price of oil ; and that every one of the overcharges and abnormal rebates he quotes is purely mythical. The truth regarding this South Improvement Company is, that a certain number of men got together and procured a charter, but as soon as it was learned what their scheme was, the whole thing was exposed and broken up, and mainly by the efforts of leading Standard Oil Company men. To treat the absurd projects of this mythical South Improvement Company as actual doings of the Standard Oil Trust, is a kind of discussion that must be called by some other name than scientific.

Mr. Hobson then proceeds to examine the movements of the price of oil after the Standard Oil Trust was formed, and accompanies his examination by a diagram (page 135) showing that from 1870 to 1875 there was a reduction in the price, due, he says, to "competition." But "1875, which marks the establishment of a monopoly of the interior oil trade in the hands of the Standard Oil Trust, also marks a sharp rise in the price." Instead of taking the pains to ascertain if this were due to any economic cause, he ascribes it all to the arbitrary dictum of the trust and says : "The moral is obvious. So long as there is competition, in spite of the expense of conducting the strife, prices fall. When the competition is suspended and there is a saving of friction, the public gains no further reduction."

Unfortunately the facts do not sustain these sweeping generalizations. The following table covers the entire period referred to by Mr. Hobson :

YEAR.	SHIPMENTS FROM WELLS. BBLs.	STOCK OF CRUDE OIL ON HAND. BBLs.	PRICE OF CRUDE OIL PER GALLON AT WELLS.	PRICE PER GALLON OF REFINED OIL FOR EXPORT.
1871	5,667,891	568,858	10.52 cts.	24.24 cts.
1872	5,899,942	1,174,000	9.43	23.75
1873	9,499,775	1,625,157	4.12	18.21
1874	8,821,500	3,705,639	2.81	13.09
1875	8,924,938	2,751,758	2.96	12.99
1876	9,583,949	1,926,735	5.99	19.12
1877	12,496,644	2,857,098	5.68	15.92
1878	13,750,090	4,307,590	2.76	10.87

It will be seen from the above that there was no rise in the price of oil until 1876, and that after two years the price dropped to a

point below the original level. It will also be observed that, taking the average for the two years, the rise in the price of crude was 97 per cent and in that of refined 34 per cent. If we compare the actual rise in the price per gallon of the crude with that of the refined, which is a much closer test than percentage, we find that the average rise in the price of refined for these two years was almost exactly identical with the increase in the cost of crude. It takes about a gallon and a quarter of crude oil to make one gallon of refined. Taking the two years together the average increase in the price of crude oil necessary to make a gallon of refined was 4.33 cents, and the average increase in the price of refined was 4.53 cents a gallon, making a difference in the movement of the two of only .20 cents a gallon. It will be further observed that in 1878, when the stock of crude oil greatly increased and its price fell to 2.76 cents a gallon, the price of refined dropped to 10.87 cents.

A fair consideration of these facts clearly shows that the special rise in the price of refined oil about which Mr. Hobson and others declaim as due to the greed of the Standard Oil Trust, is fully accounted for by the economic causes affecting the price of crude oil; and over these the Standard Oil Company had no control.

Mr. Hobson then says (page 135): "From the time of the formation of the trust the fall of price has been only a half a cent." Here again his facts are at fault. In 1880, the year before the trust was formed, the price of oil was 9.12 cents a gallon. In January, 1895, it was (70 Abel test) 5.80 cents, a fall of over three cents instead of half a cent.

"It is possible," says Mr. Hobson, "that a firm like the Standard Oil Company may to some limited extent practice a cheap philanthropy of profit sharing, in order to deceive the public into supposing that its huge profits enrich many instead of a few." This is an unfair insinuation, since the Standard Oil Company has never attempted any profit sharing or other philanthropic scheme in connection with its business. It has contented itself with steadily improving the quality and reducing the price of its product, — a course which it has found to be highly profitable.

Mr. Hobson's unscientific attitude on the subject of trusts is greatly to be regretted, since it is the subject upon which scientific precision and economic fairness are most needed. After he gets past the trust question, he resumes an orderly and creditable demeanor. His discussions of the influence of machinery upon consumers, laborers, towns, industrial development and other phases of social life are

excellent. They show an appreciation of that action of social and ethical forces upon economic development which is too often overlooked by economists.

The chapter on "The Economy of High Wages" is especially good. The author successfully combats the claim of Schoenhof, Atkinson, Rae and others that the individual capacity of laborers to produce increases directly with the rise of wages and the shortening of hours. By some slip (probably typographical error) Mr. Hobson connects the present reviewer's name with that of Mr. Schoenhof in this relation, and says :

The moral which writers like Mr. Gunton and Mr. Schoenhof have sought to extract and which has been accepted by not a few leaders in the labor movement is, that every rise in the wages and every shortening of hours will necessarily be followed by an equivalent or a more than equivalent rise in the efficiency of labor.

As a matter of fact I have long contended against this view. It is true as a general thing that countries which have high wages have the greatest *per capita* production, but it does not come about in any such way as the Schoenhof-Atkinson-Rae class of writers assume. The way in which higher wages perceptibly increase output, especially where the working day is ten hours or less, is not so much through an increase in the personal efficiency of the laborer, as through the expansion of his social demands. The enlargement of the consuming capacity of the community stimulates the use of improved methods, which gives larger products and consequently lower prices. Mr. Hobson states the case admirably when he says :

From the standpoint of the community nothing else than a rise in the average standard of current consumption can stimulate industry. When it is clearly grasped that a demand for commodities is the only demand for the use of labor and of capital, and not merely determines in what particular direction these requisites of production shall be applied, the hope of the future of our industry is seen to rest largely upon the confident belief that the working classes will use their higher wages, not to draw interest from investments (a self-destructive policy), but to raise their standard of life by the current satisfaction of all those wholesome desires of body and mind which lie latent under an economy of low wages.

The large kernel of truth in this situation is that all real societal improvement rests not upon saving, but upon consuming ; that the road to better social life and more efficient and cheaper production is through constantly increased consumption by the millions. It is not the expansion of the laborer's muscle, but the expansion of his

desires and the strengthening of his demands and the broadening of his social life that gives happiness, cheapness and progress to society.

GEORGE GUNTON.

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Report on Agencies and Methods for dealing with the Unemployed. By the Labor Department of the British Board of Trade. London, Eyre & Spottiswoode, 1893. — 438 pp.

The Unemployed. BY GEOFFREY DRAGE, Secretary to the English Labor Commission. London and New York, Macmillan & Co., 1893. — 12mo, 277 pp.

The Board of Trade's *Report* is a valuable summary of modern attempts in Great Britain, and to some extent in other countries, to solve the problems of unemployment. Especially useful are those parts of the report dealing with facts and immediate deductions from facts; where classification and broad generalization have been attempted, the results are sometimes confusing and even contradictory. Yet this is scarcely to be wondered at; for previous writers upon the unemployed, as well as practical field workers who have come in touch with this complex class, have hitherto found it most difficult to define satisfactorily the meaning of the term, and to analyze the nature of the manifold problems presented.

The classification of the unemployed adopted by the Board of Trade does nothing to help us out of our difficulties; indeed, it hardly pretends to do anything. The term unemployed is said to be used in "four distinct senses, though of course the classes of persons corresponding to each definition overlap to a greater or less extent." These classes are summarized as follows:

1. "Those whose engagements being for short periods have terminated their last engagement on the conclusion of a job, and have not yet entered on another."

2. "Those who belong to trades in which the volume of work fluctuates, and who, though they may obtain a full share during each year of the work afforded by their industry, are not at the given time able to get work at their trade."

3. "Those members of various trades who are economically superfluous," because there is not enough work to be done.

4. "Those who cannot get work because they are below the standard of efficiency usual in their trades, or because their personal defects are such that no one will employ them."

Evidently a workman might be included in three of these classes at the same time. But it would seem that the great object in classifying the unemployed must be the opportunity thus afforded for treating each class separately according to its needs. If this is true, classifications which do not classify can be of very little value.

It is interesting in this connection to note a kind of natural and unconscious classification, made largely by the unemployed themselves, that is revealed by various passages in the Board of Trade's *Report*. In the part dealing with European "labor colonies" it is stated that the colonies are not occupied by the worthy unemployed, but by those who have suffered moral as well as material collapse. . . .

The hard-working man of reputable life who seeks the colony because he is out of employment is exceedingly rare, if indeed he exists at all. *The classes will not mix; to admit the one is to exclude the other.* . . . Seventy-six per cent of the inmates of the German colonies have been imprisoned.

These colonies seem able to reform only a very small proportion of their inmates, and evidence is fast accumulating that their great usefulness is as social pest-houses, where the vicious semi-criminal — the vagabond and human parasite — may be segregated from humanity, just as the victims of other contagious diseases are excluded from society. On the other hand, "labor bureaus" are usually successful in proportion to the care taken to select applicants for registration, and thus virtually to exclude the "chronically unemployed class." Employers will use these bureaus only when they feel confident of securing good workmen. Thus the fields of usefulness for labor colonies and labor bureaus respectively seem to be marked out by the inexorable logic of facts: for the former, social wreckage; for the latter the skilled laborers and the best¹ men among the unskilled. Between these two classes there is evidently another great class: the unskilled and often economically superfluous, but well-intentioned unemployed.

The great need of a wise classification of the unemployed is seen in connection with the "relief work" that is resorted to in times of special financial suffering. Hitherto most of such work has been secured by the "loafing and shiftless class, to the partial or total exclusion of the competent victims of trade fluctuation."

After a thorough description of "Permanent Agencies" and "Temporary Schemes" for dealing with the unemployed in Great

¹ Roughly determined by the ability to secure a testimonial of character from last employer.

Britain and Ireland, the Board of Trade's *Report* concludes with an interesting investigation of "European Labor Colonies," by Professor Mavor of Toronto University, and reprints of several valuable historical documents, among others an account of the "Paris National Works of 1848," and John Locke's "Representation as to the Employment of the Poor" (1696), copies of which have been most difficult to obtain.

Mr. Drage's work, as appears from his own statement, would never have seen the light but for much valuable information culled by him from the *Report* just discussed. This being true, it seems strange that he should devote so much space to virulent criticism of that *Report*, which, while undoubtedly not without faults, is nevertheless a most useful publication.

When we consider what further excuse Mr. Drage's book has for being, we find that it contains an interesting summary of the present condition of England with regard to unemployment, a classification of the unemployed, a critical review of remedies suggested or adopted, and in conclusion Mr. Drage's own ideas as to the solution of the problem — ideas intended for the enlightenment of "the practical man, who is inclined to leave the theoretical and statistical side of the inquiry to professors and bureaucrats." Mr. Drage believes that "it is impossible to form any exact or even approximate estimate of the numbers of unemployed at any particular time," and that the only "practical method available" in England, "with existing data — is that afforded by the out-of-work returns of various trade societies, which may be taken as an index of the general condition of the labor market." In this connection he introduces a number of valuable charts.

Two main classes of the unemployed are distinguished — "those with whom want of employment is merely temporary, and those with whom it is permanent." Under the second class are two subdivisions, "though it may be difficult to determine to which a given individual belongs": (1) casual laborers whose work "possesses a certain economic value, but is as a rule unskilled and inefficient": (2) "the unemployable, because through some physical or moral defect they are economically worthless." Great stress is laid upon the evil effect of rapid and capricious changes of fashion in producing unemployment, — changes which, Mr. Drage thinks, might to a large extent be prevented.

A permanent superfluity of labor exists almost exclusively among laborers possessed only of a low grade of skill, or of skill of a kind for which

there is no demand. Unless this class acquires the skill necessary for some definite trade, the superfluity must, as time goes on, rather increase than diminish.

Mr. Drage hardly notices the strong and growing tendency in modern industry to throw men approaching old age out of employment almost irrespective of the skill they possess. This seems largely due to the fact that adaptability to change is one of the prime requisites in a modern industrial worker, and this quality is rarely possessed by the aged.

In discussing European labor colonies, Mr. Drage states that their chief usefulness is as "a receptacle for those who, if free, would prey upon society, and render means for relieving the deserving poor almost entirely futile." These colonies "have not shown that they are capable of reclaiming the colonists; moreover, in no case are they self-supporting." However, if introduced into England, Mr. Drage thinks such colonies may well undertake the task of discovering "what members of the permanently unemployed class are capable of being reformed." To this end the colonies

should be required to be absolutely self-supporting. . . . Entrance must be voluntary and exit must be voluntary, but after a certain period has been allowed to elapse, during which a man may be supposed to have somewhat regained his normal vigor, workmen can only be suffered to remain in the colonies provided they are able to earn their maintenance.

But it is clear that if these colonies should be made free and voluntary, with little or no work required for a "certain period" after admission, the tramp and the "bum" would be likely to use them just as much as they do the German colonies, only their periods of stay would be shorter, and the community thus just so much the worse off. The self-respecting, honest unfortunate would not be found among such men; and if restrictions should be put upon readmission, it would result in keeping out worthy as well as unworthy. In another place, when reviewing the Board of Trade book, Mr. Drage favors two kinds of colonies, "one for the discharged prisoner, the vagrant and the loafer on the open principle, and another for the worthy unemployed on the principle of selection, or at least investigation"; but he admits that such investigation would involve delay and "numerous practical difficulties." Mr. Drage does not seem consistent in this matter.

In the concluding chapter the usual result is reached, that "no one heroic remedy can afford a practical solution of the problem of

the unemployed," but that we must trust to "a series of lesser remedies" scientifically applied.

The existing stock of temporarily and permanently unemployed must be eliminated; the recurrence of the problem of men thrown temporarily or permanently out of work must be prevented; and industry must be so organized as to assist the circulation of labor in accordance with the demand for it.

Unemployment being a national and not a local problem, it is "necessary that the problem as a whole should be grasped, though not dealt with, by one body;" accordingly "a special group of experts is needed" for general oversight and coördination of the actual work, which must be left largely in the hands of local agencies.

COLUMBIA COLLEGE.

A. CLEVELAND HALL.

Trusts or Industrial Combinations in the United States. By ERNST VON HALLE, Ph.D. New York, Macmillan & Co., 1895. — xiv, 350.

This little book is the best handbook that we now have concerning industrial combinations in the United States. The titles of the chapters show well the scope of the work: (1) Earlier Public Policy as to Combinations; (2) Condition of Affairs before the Interstate Commerce Law and Anti-Trust Legislation; (3) Forms of Organization; (4) Objects of Organization; (5) Nature and Effects of Trusts; (6) The Latest Phase of Corporation Law and its Effect on the Form and Nature of Combinations; (7) Public Opinion and the Combinations; (8) Conclusion. For those who are fairly well read in the trust literature of the last four or five years, not the least valuable part of the book is to be found in the sixteen appendixes which make up more than half of the book. These appendixes include the trust agreements, by-laws, *etc.*, of the Standard Oil Company and the Reading Coal Combine, the reorganization contract of the Cotton Oil Trust, the charter of the Distilling and Cattle-Feeding Company, and other interesting forms of agreement or by-laws, besides the anti-trust laws of the United States, Illinois and Texas. Appendix XVI contains what is probably the best bibliography of the subject that has yet been published.

In discussing so broad a subject in so brief a space, it has been necessary for the author to assume that the reader has considerable knowledge of the general nature of corporate business, somewhat technical terms being used from the outset with no explanation. The author is familiar with practically all of the late literature on the subject, and

in addition to knowledge gained from it, he has availed himself also of a great deal of information given him in private conversation by managers of several of the leading trusts and combinations in the country. In setting forth the facts and opinions thus gained, great care has been employed, and I have found no statement that is inaccurate, and only one that is at all misleading. On page 89 there is an implication that the speculation in the stocks of the great corporations by their managers has been mainly with the companies' funds; and it is implied, perhaps rather by omission than otherwise, that there has been little private speculation by the managers in stocks owned by themselves personally. The late developments regarding the Whiskey Trust seem to show that the latter practice, rather than the former, is responsible for the present unfortunate condition of that company, and the common belief is that the manipulations of the Sugar Trust stocks are of the same character.

In his general treatment of the subject the author has been eminently fair-minded. If he errs at all in this regard, it would seem to be rather in favor of the trusts than otherwise. Though he recognizes that they may well become in many respects an evil in industrial society, he still thinks that on the whole they are but a step in our industrial development and that they cannot be done away with. He believes that the repeal of the present anti-trust laws would be desirable, and for the control of combinations he looks rather to the creation of a commission similar to the Interstate Commerce Commission than to more radical measures. It is of especial interest to Americans to see that so well read and competent a foreign observer as Dr. von Halle — one, moreover, who has had the opportunity of forming a very careful judgment regarding our industrial affairs — should apparently have reached so hopeful a conclusion regarding the power of the American people to push on toward better industrial and political conditions. He recognizes the fact that our industrial prosperity is largely dependent upon political action, but seems to believe, with Professor Bryce, that the American people will by and by realize the meaning of present facts and adapt their action to the necessities of the time. Despite the present unsatisfactory control of monopolies by the government, he believes that ultimately the people will equip themselves with the "administrative machinery of a reformed civil service," and that the corporate character of our industrial organization can then be well controlled by public supervision.

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Sir William Petty; a Study in English Economic Literature.

By WILSON LLOYD BEVAN, A.M., Ph.D. Publications of the American Economic Association, Vol. IX, No. 4. Baltimore, 1894. — 102 pp.

It is unnecessary to emphasize the change wrought by Adam Smith in the spirit of English writing upon economic subjects. His predecessors, with the possible exception of Sir James Steuart, attempted no comprehensive survey of industrial society; they took up practical problems concretely and severally, considering them rather with reference to government initiative than to individual enterprise, viewing them from the standpoint rather of national strength than of industrial prosperity. Among Smith's successors, on the other hand, scarcely one has attained in "scientific" estimation to the first rank, who has not produced sooner or later a "system," or at least a "treatise."

The task of an historian of economics who seeks to present to a modern audience the notions of a seventeenth-century writer has thus become complex. Shall he conform his treatment of Petty, for example, to his audience or to his subject? To follow the former course requires that Petty's ideas be presented systematically, or at least topically, and that the topics be selected and to some extent grouped according to a nineteenth-century conception of them. The advantages of this course are patent: the writer has a ready-made standard for judging Petty's notions, and the reader, at any rate the modern reader, finds prompt answer to the questions that he is likely first to ask. The disadvantages are less obvious, but not less real. They are involved in every such attempt to study a thing before it began as if it had already begun; they may lead to inquiries as to what Petty thought about problems concerning which, in all probability, it never occurred to Petty to think at all. No possible answer to such questions can be correct, for the questions are themselves irrational.

If the historian attempt to follow the second course, and conform his treatment to his subject rather than to his audience, he will find himself forced to study and to discuss each economic problem in the light in which it presented itself to the writer under consideration. This is probably the sounder method, and, as recent studies of Ricardo have shown, it is capable, in competent hands, of affording results of great value. It has, however, a considerable drawback, inasmuch as the historian must supply the industrial *milieu*, which, for a remote period, at any rate, the reader cannot be expected to

construct for himself. And the difficulty of putting the reader in touch with the period under discussion increases, generally speaking, in proportion as that period is remote.

Dr. Bevan's study is not confined to Petty's economic theories. It opens with two chapters on his life (1623-1687), followed by a third devoted to his "Advice to Samuel Hartlib for the Advancement of Learning," and to the "Observations upon the Bills of Mortality." The question of the authorship of the "Observations" is too complicated for adequate discussion here. Dr. Bevan rather summarily assigns them to Petty. The probability has seemed to most investigators overwhelming that the "Observations" were written, as they purport to be, by Petty's friend, Captain John Graunt; and it is not plain that Dr. Bevan has adduced any new evidence of weight on the other side.

The more specifically economic portion of the study is contained in the fourth and fifth chapters. Here Dr. Bevan takes up successively Petty's notions of land, labor, value, rent, money and taxation, closing with a sixth chapter on "Petty in relation to contemporary England, and his place in economic literature." To such topical treatment Petty, who elaborates his concepts with a care unusual among seventeenth-century writers upon economic subjects, is perhaps better suited than any of his contemporaries. Nevertheless, even with the help at critical points of a guide like Roscher, Dr. Bevan has not entirely succeeded—it was perhaps impossible that he should entirely succeed—in avoiding the dangers which beset his chosen method. In taking up Petty's views of labor, for example, he lays more emphasis on the discussions of the differences between laborers, and less on the discussions of their aggregate number, than does Petty himself. Similarly Petty's ingenious attempts to determine the amount of rent are treated at greater length than is his view of rent as the measure of the social surplus, and hence the chief criterion of industrial prosperity. It is true that Petty was, at these as at many other points, nearer to modern views than were most of his contemporaries; but he was by no means so near, it seems to me, as the reader of this study is almost certain to infer. When, for example, Dr. Bevan says (page 98) that "Petty would quite agree with Ricardo's definition of rent as the payment for indestructible powers of the soil," he makes a futile assertion, which it is equally impossible to establish or to controvert; and, what is worse, he risks leaving upon the reader's mind the erroneous impression that Petty's attitude towards the landlord's share was

somehow like Ricardo's. Other examples might be adduced; but these will suffice to illustrate the point. Faults of this sort are almost inseparable from the method employed, and Dr. Bevan has perhaps fallen into them no more frequently than other writers who have attempted like tasks.

There is, however, another characteristic of Dr. Bevan's study which may not pass unnoted. In details it is frequently inaccurate to a degree that must detract somewhat from its value. Not only would it be tedious to specify the fourteen mistakes in the bibliography of Petty's printed writings, or to enumerate a long list of such slips as "a broadside of four pages," "Graunt's death in 1673" (he died April 18, 1674), "Sir Joshua Child," "Samuel Hartlieb," *etc.*, but it would also be peevish to call attention to such trifles, were they not typical of a laxity that extends to more important matters. For example, Dr. Bevan says (page 49) that the "Observations" make "the astounding statement that London doubles its population in eight years." Graunt really says: "in eight times eight years." Again, on page 88 we read: "Granting the correctness of his [Petty's] estimate of the population of England, his assumption that the population of a country always increases in the same ratio is one whose falsity he should have seen." He did see it, and in the very preceding paragraph he guards his statement thus elaborately: "We do for the present, and in this Countrey admit of 360 Years to be the time wherein the People of *England* do double, according to the present *Laws* and *Practice* of *Marriages*" (Petty's own italics). Manifestly it is not Petty who has committed the oversight here. Once more — and this shall be the last example — Dr. Bevan places side by side several passages from Petty and from Adam Smith, to show wherein Smith was anticipated by Petty. One of the cases is the following, the italics being Dr. Bevan's:

[Smith:] The rent of a house may be distinguished into two parts, of which the one may very properly be called the building rent, the other is commonly called the ground rent.

The building rent is the interest or profit of the capital *expended* in building the house. . . . This surplus rent (the second) is the price which the inhabitant of the house pays for some real or supposed *advantage* of the situation.

[Petty:] An house is of a double nature, *viz.*, one wherein it is a way and means of *expence*, the other as it is an instrument and tool of *gain*.

Each of these brief extracts needs to be considered in connection with the argument of which it forms a part. Smith calls attention

to the recognized distinction between ground rent and building rent, in order to discuss the incidence of a tax on gross rent collected from the occupier. The "capital expended" is the house-owner's; the "advantage" is the landlord's. Petty's argument is concerned neither with landlord nor with owner; the "expence" and the "gain" are the expense and the gain of the tenant. That this may become apparent, Dr. Bevan's brief quotation from Petty must be completed:

For a shop in *London* of less capacity and less charge in building than a fair Dining-Room in the same House unto which both do belong, shall nevertheless be of the greater value; so shall also a Dungeon, Sellar, then a pleasant Chamber; because the one is expence, the other profit. [Treatise of Taxes and Contributions, 1662 ed., p. 22.]

Petty elaborates this idea to show that the tax is unequal in its imposition; with its incidence he is not here concerned. He considers the tax unequal because houses of like cost of production — "charge in building" — have, according to his general theory of value, like true or "intrinsic" values, and should be taxed like amounts. But such houses are of greater (market) value when used as tools of gain than when consumed in the "way and means of expence." The diversity between Smith's and Petty's points of view comes out even more clearly if their arguments be followed a little further. Smith goes on to say that the builder must have average profits, and that more or fewer houses will be erected, according as the profit on existing houses is above or below the average. Petty's argument is essentially different, because he had in mind the condition of the building trade in London after the Restoration, when, as he almost immediately remarks, the erection of new buildings, if not absolutely forbidden, was at least greatly restrained by statute. In other words, Petty and Smith are, for different purposes, looking at different aspects of building rent, arising out of different industrial conditions. Smith, in the course of his discussion, chances to use a sentence which shows a verbal coincidence with a sentence of Petty's. This coincidence is described as "a small but interesting resemblance." One may agree in part: the resemblance is small — but is it interesting?

Judged by the economic standards of his time, Petty was an able thinker. Much of his work has an historical interest; some of it is valuable even at the present day. To make him better known to students of the history of economics than as yet he is, was a happy thought. It is unfortunate therefore that this, the first large mono-

graph by an American student upon one of the ante-Smithian economists, fails in important respects to meet the expectations raised by the circumstances of its publication.

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La Teoria del Salario nel Concetto dei Principali Economisti.

Di ALDO CONTENUTO. Milan, Fratelli Dumolard, 1894. — 374 pp.

The author of this painstaking volume is a professor in Venice, at one of the many technical schools in Italy, which correspond to the German *Realgymnasia*. He is one of the younger generation of Italian economists, whose number and activity show that there is no relaxation in that striking growth of economic science which is among the fruits of the regeneration of Italy.

The book divides itself into three parts. First, a general or introductory part, in which there is very brief consideration of a wide range of topics, — the nature of labor, the law of demand and supply, the difference between labor and commodities, and other like topics. Next, a special part, where the views of various writers of all nations on labor and wages are explained and criticized. Last comes a conclusion, in which the author summarizes his own views, already set forth more or less in the course of his criticisms on the views of others. By far the largest space is given to the second part. Here we have successive chapters discussing the theory of wages at the hands of the English, the Germans, the Austrians, the French, the Italians and the Socialists. The book is thus made up mainly of summaries and criticisms of the views of these various writers.

The historical work is neatly and in the main accurately done, but it can hardly pretend to be exhaustive, and even within the limits inevitable from the treatment of a large subject in brief space, it gives no evidence of special insight or great gifts of interpretation. There are smooth and straightforward summaries of the more prominent passages in the writings of the various authors on the theory of wages. But to cite only the classic writers — Adam Smith and Ricardo and Mill are by no means discussed with full appreciation of their position in the development of thought. Ricardo did much more to establish the doctrine of the wages-fund than Professor Contento gives him credit for — or discredit, as the reader may prefer, while the younger Mill, to whom our author ascribes "the first true exposition" of that doctrine, did no more than to set forth

what was common property in his day. In the selection of the writers, again, and in the allotment of space to one or another, there is room for criticism. Among the Germans four writers only appear, and in this haphazard order: Roscher, Hermann, Mithoff and Thünen. The Austrians are represented by Böhm-Bawerk alone; the Socialists by Marx and George — a curiously ill-assorted pair. Adam Smith, Ricardo and the younger Mill get less than half a dozen pages apiece; Loria gets twenty-five, and Ricca-Salerno and Pantaleoni ten apiece. If this generous attention to the Italians is the natural result of the author's interest in the work of his countrymen, it is still surprising to find recent French writers, like E. Chevalier, Beauregard and Villey, who have made no contribution to the subject one way or the other, in possession of a large part of his pages.

The wages-fund doctrine is the main subject, though natural wages, the cost of production of labor, and other such topics, get a share of attention. Professor Contento's position is distinctly conservative. He denies that wages are paid from product or depend directly on the productiveness of labor, and maintains that they come from the capital of employers, though not from any inelastic or rigidly predetermined fund of capital. He professes openly to be a disciple of Cairnes, and accepts, with no serious qualification, the theory of the wages-fund as recast by that writer. Cairnes, in fact, has evidently had more vogue and more attention in Italy than he has received elsewhere on the continent. Indeed, it is curious that both Cairnes and Walker, who are comparatively little known to the omnivorous Germans, have been much read and discussed by the Italians. But as to the merits of the controversy whose opposite sides are represented by these two writers, opinions seem to be divided in Italy quite as much as elsewhere. The reader of this review of the literature of the subject, whether or no he accepts the author's conclusions, must be impressed by the absence of any consensus of opinion among economists.

Professor Contento disarms criticism on his own views by the modesty of his preface, in which he tells the reader that he professes to present no complete work and to add no new doctrine. The reasoning and the conclusions of Cairnes, which he has adopted, have never made their way to general acceptance, nor are they likely to. What Cairnes said was an effective answer to the more salient parts of the criticisms put forth on the old doctrine by Longe and Thornton, but as an independent exposition it is far from complete

or satisfactory. The subject still remains largely in suspense, and still awaits a definitive solution. At all events, such a solution certainly is not found in this volume.

F. W. TAUSSIG.

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Traité d'Économie Sociale, ou l'Économie Politique coordonnée au Point de Vue du Progrès. Par A. OTT. Deuxième édition, entièrement refondue et mise au courant. Paris, Librairie Fischbacher, 1892. — 2 vols., 1012 pp.

It is very difficult to give an adequate conception of the pretensions of this cyclopædic work. It is an interesting mixture of economics, ethics, theology and history. First of all we are told: "Economic science has not then simply to state laws and facts; it has above all to solve problems. Hence it is not enough for it to state *what is*, but it must also teach us *what ought to be*, and how *what is* may become *what ought to be*." It is this which the English school of economists have failed to understand. Moreover, "social and individual preservation, the realization of liberty and equality, are not simply scientific opinions, left to individual acceptance; they are moral duties, imposed upon humanity by a will superior to its own."

Economics, ethics and religion, thus bound together in indissoluble hierarchy, have found more and more perfect expression in the industrial and social institutions of successive historical epochs. Christianity has now presented to humanity the final goal of its efforts, — "fraternity of all men and all peoples, under the laws of liberty and equality." This ideal, having already transformed the political and civil constitution of modern nations, is now to be realized in the economic order. Upon society rests the responsibility of choosing either the way of peace and order or that of violence and revolution.

Social economy, then, is "the science which aims to organize labor with a view to the highest welfare of society and of the individual and the realization of liberty and equality." Obviously such a science will not proceed in the beaten track of economic inquiry. Moral considerations will come before material. "Seek first the kingdom of God and his righteousness and all these things shall be added unto you," supplants the materialistic postulates of the classic economics. Instead of the conventional division into production and distribution, we shall ask: What are the occupations and products necessary or useful for social and individual welfare and

the attainment of liberty and equality? What methods and conditions of labor are most appropriate to this end? How ought labor to be distributed among individuals, with a view to liberty and equality? How ought the instruments of labor to be distributed from the same point of view? What is the best general method of distributing products? How ought the product to be applied to social welfare? How ought individual welfare to be secured? The answers to these seven questions constitute the seven books of Part I and occupy a large part of both volumes. Four other questions suggested by the relation of economic facts to the social phenomena furnish the titles of the four brief chapters constituting Part II, at the end of the second volume: Inventions, International Trade, Laws of Population, Charity.

An examination of the present industrial order in the light of these questions, leads to an indictment which enumerates nearly all the familiar charges brought against society by classic, radical or socialistic critics. There is nothing original in this indictment and it need not detain us. The conclusion is that all the evils indicated flow from two fundamental causes: (1) the laws which regulate the distribution of the instruments of labor; (2) the absolute freedom and the absence of all prevision in production and exchange. Two great problems, therefore, present themselves: first, to destroy the inequality which exists in our economic order, so that demand will correspond to real need; and second, to establish prevision and order in production — that is, to proportion production to demand. These two problems comprehend the whole of social economy.

The remedy proposed is association, which, "by giving the instrument of labor to the laborer in proportion as he is a laborer, will destroy at a blow all the deplorable effects which result from the existing distribution." It will liberate the workman, rescue him from his inferiority, give him the entire fruit of his labor, and enable him to take his part in the production of things agreeable and useful. It will secure for all liberty in the choice of occupation. It will transform demand, and consequently the distribution of labor and of production in general. At the same time it will correct some of the disorders born of unlimited competition, — by making trade and production more regular, by banishing speculation, by assuring a market.

The obvious objection to this solution is that association — productive coöperation and all the rest — has been tried and found wanting. The failure is admitted by the author, who ascribes it to lack of moral

sentiment among laborers, and to the opposition of the "all or none" type of socialist or collectivist reformers. Moreover,

it is beyond doubt that association presupposes moral conditions superior to those demanded by individual labor; a man needs more morality, more intelligence, a higher conception of duties, to work harmoniously with others, than to work by himself. Unhappily it is also certain that the majority of workingmen are far below this moral plane. But provided a minority of them — and even a small minority — have reached it, it is enough.

The friends of association are therefore called upon to gird up their loins. State discriminations in favor of association are justified; but state loans are not needed. On the other hand, private benefactions for the encouragement of coöperation, such as that left by M. Rampal to be administered by the municipality of Paris, are to be encouraged. Legislative restrictions upon freedom of organization should be removed; government contracts should be open to bids from such associations; there must be no limit as to membership; all employees must be included; profits must not be distributed on capital. Without these precautions coöperators will inevitably become "employers" and revert to the capitalist organization they start to cure. Profit-sharing is a step in the right direction. It is welcomed for its own sake as an ameliorating agent; but especially as a transition to workingmen's associations.

Besides "association," the author demands, as complementary and partly transitional measures, the organization of credit; modification of the law of inheritance; a minimum rate of wages; fixed rents; a reform of our system of taxation, notably by the creation of a progressive income tax; institutions of *prévoyance* connected with institutions of credit; trade unions; the organization of technical education; and repressive measures against excessive competition.

Such a treatise has an obvious interest as illustrating a method of approaching the problems of social economics. It presents all the elements of strength and of weakness. There is something hopeful in the mental attitude which recognizes the necessity of prefacing each new phase of a discussion with a segment of universal history, running from that portion of the ever-widening periphery of social phenomena known as the "present state of the problem," back to that limbo-center of all things, primitive society. But these pie-shaped segments of universal history make enormous demands upon the digestion of the critical reader and almost equally exorbitant claims upon the purely receptive student's confidence in the omniscience and impartiality of the author. Indeed, the suspicion fre-

quently suggests itself that these historical prefaces are to be regarded not as light thrown upon obscure problems by research, but as the historical shadow which reconstructive theories are apt to project into the past.

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The Lowell Lectures on the Ascent of Man. By HENRY DRUMMOND, LL.D. New York, James Pott & Co., 1894. — xi, 346 pp.

The fundamental fallacy of Kidd's *Social Evolution* lies in the assumption that all acts not purely selfish are "ultra-rational," or in other words, irrational. In *The Ascent of Man* it is shown that altruism is neither irrational nor supernatural, but is a necessary factor in the development of society and is capable of scientific explanation. The thought is not altogether new, but it has never before been so thoroughly well demonstrated.

It is almost axiomatic that society could not exist without altruism. Even the simplest forms of coöperation or mutual aid would be impossible, unless the individuals concerned had some regard for each other. Association presupposes some degree of unselfishness. But if altruism is a necessary social function, it should be possible to explain its origin and development by natural causes, just as the biologist explains the development of an organ by showing the necessity for its use. And so Professor Drummond explains the growth of altruism as a part of the process of evolution, conforming to the law of the survival of the fittest. He finds the origin of altruistic feeling in maternity, and shows that the devotion and rudimentary self-sacrifice of both primitive parents must have been favorable to the survival of their offspring. Thus altruism, or "the struggle for the life of others," arose necessarily out of the function of reproduction; and, beginning in the family, it gradually extended to embrace members of the clan, the tribe, the nation, the human race.

Professor Drummond contends that the "struggle for life" has been over-emphasized, at the expense of the other factor in evolution — the "struggle for the life of others." He says:

The first step in the reconstruction of sociology will be to escape from the shadow of Darwinism — or rather, to complement the Darwinian formula of the struggle for life by a second factor which will turn its darkness into light.

The Ascent of Man would be significant as an answer to *Social Evolution*, even if it contained no reference to Mr. Kidd's peculiar

views. The two works were published at nearly the same time ; but *Social Evolution* appeared just long enough in advance to allow Professor Drummond to embody an answer in express terms in his Introduction. Mr. Kidd's conclusions, he says,

show the impossible positions to which a writer, whose contribution otherwise is of profound and permanent value, is committed by a false reading of nature. Is it conceivable, *a priori*, that the human reason should be put to confusion by a breach of the law of continuity at the very point where its sustained action is of vital moment? The whole complaint, which runs like a dirge through every chapter of this book, is founded on a misapprehension of the fundamental laws which govern the processes of evolution. The factors of Darwin and Weismann are assumed to contain an ultimate interpretation of the course of things. For all time the conditions of existence are taken as established by these authorities.

And again :

To put the future of social science on an ultra-rational basis is practically to give it up. Unless thinking men have some sense of the consistency of a method, they cannot work with it, and if there is no guarantee of the stability of the results, it would not be worth while. But all that Mr. Kidd desires is really to be found in nature. There is no single element even of his highest sanction which is not provided for in a thorough-going doctrine of evolution. When evolution comes to be worked out along its great natural lines, it may be found to provide for all that religion assumes, all that philosophy requires and all that science proves. For nothing can ever be gained by setting one-half of nature against the other, or the rational against the ultra-rational. To affirm that altruism is a peculiar product of religion, is to excommunicate nature from the moral order, and religion from the rational order.

Perhaps the greatest service which Professor Drummond has rendered to the world lies in thus popularizing the conception of universal evolution.

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Social England. Edited by H. D. TRAILL. Vol. II: From the Accession of Edward I to the Death of Henry VII. New York, G. P. Putnam's Sons, 1894. — 587 pp.

In a review of the first volume of this work (POLITICAL SCIENCE QUARTERLY, September, 1894), sufficient was said concerning the merits and demerits of the undertaking as a whole. Professor Maitland continues to give us his learned, yet graceful and witty, little essays on legal history ; Mr. A. L. Smith hands on, with cautious

judgment, the Stubbsian tradition; Mr. Hubert Hall reveals the symmetry of the mediæval customs administration; Mr. W. H. Hutton writes upon the church with the sympathy of a humanist theologian born out of due time; Mr. R. L. Poole speaks with unapproachable authority on Wycliffe; and many other specialists, like Mr. Creighton and Mr. Oman, discourse on their several themes — untroubled by much concern for the opinions of their fellow-contributors. Of course it is a work that every fair historical library ought to have.

Such a book it were idle to attempt to criticise in detail. But it suggests the advisability of once more calling attention to a matter which has already been touched upon in these pages, in notices of the works of Thorold Rogers and Professor Cunningham, but which would seem to need constant reiteration. To Mr. W. J. Corbett have been assigned the sections on "Agriculture"; and he has produced for us some pleasantly written and suggestive pages. It falls to him to deal with the Black Death of 1349, and the Peasant Revolt of 1381; and, although their importance has doubtless been exaggerated, an adequate judgment concerning them certainly involves an intimate knowledge of contemporary conditions. But — most unfortunately, considering how many will learn their history from these pages — Mr. Corbett does but reproduce the theory of Thorold Rogers, with no attempt to supply for it the evidence which the master himself never adduced. After describing (page 98) the large extent to which labor dues from the villeins to their lords had been commuted for money payments, he explains the Peasant Revolt by the determination of the landlords "to revert wholesale to the personal services of former times" (page 246). It will hardly be believed by the reader that for this assertion there has not yet been produced a tittle of positive evidence. Yet here the argument *a silentio* is surely in place. Our evidence for the fourteenth century is not as complete as we should like; but it is considerable in bulk. Mr. Corbett hardly realizes what a big thing it is that he follows Mr. Rogers in imagining. It is inconceivable that, in those centuries when precedent so quickly became custom, scores of masters should have sought to disturb habits in their tenants of twenty, fifty, a hundred years' standing, and yet no trace of the "desperate expedient" should have come down to us. Doubtless services still uncommuted were more rigidly exacted, and there was, as a contemporary poet says, "a bitterer bid to the boon"; but this is very different from a "wholesale reversion" to "works" long since exchanged for "rent."

The causes of the rising were of course complex; but any one who will read through the accounts Walsingham gives us of the troubles of the convent of St. Albans with its tenants, will find there a picture of the situation in the rural districts most affected which needs no extraneous theory for its explanation.

The source of some other misapprehensions of the agrarian history of the fourteenth century which are evident in Mr. Corbett's narrative, is the failure to remember that rough-and-ready distinction between "laborers" and "tenants" which is drawn even by the statutes. Speaking in general terms it may be said that "laborers" did not take the place of "tenants" except in providing labor for the lord; they grew up beside them (being probably, in large part, identical with the "cotters"). The Statute of Laborers did not touch the substantial tenants; it touched only those who "had not of their own whereof they might live, nor proper land about whose tillage they might themselves occupy." The Peasant Rising, on the other hand, *was*, in the main, as Walsingham and Froissart and the Charters of Manumission sufficiently show, a rising of tenants. Accordingly "the increasing stringency of the Statutes of Laborers," to which Mr. A. L. Smith in part attributes the rising (page 153), had nothing directly to do with it, in the sense most readers will attach to his words; nor can it, as by Mr. Corbett, be called "the first struggle on a large scale between capital and labor in England" (page 252), without an undue straining of language.

One word more on another topic, already touched upon here (VI, 565), in reviewing Dr. Gross' *Gild Merchant*. Mr. Hubert Hall, in a section otherwise valuable and freshly thought out, goes beyond even Dr. Gross in believing it "probable" that at first "craftsmen formed in most towns a *majority* of the gild brethren," *i.e.*, of the merchant gild (page 110). It would be well if we could be shown the grounds for such an assertion: to the present writer, at least, it seems hard to fit it into what we know of gild history in England and elsewhere. And the further statement that "membership in the gild conferred the freedom of the borough and the legal status of burgess," is hardly reconcilable with the impression we get from the records, which is that, except in the case of lords of manors or heads of religious houses *outside* the town, the gild merchant was primarily an association *of* burgesses, *i.e.*, of persons who were already burgesses before they entered the gild.

W. J. ASHLEY.

Wealth and Moral Law. BY E. BENJAMIN ANDREWS, D.D.
Hartford Seminary Press, 1894. — 135 pp.

The lectures included in this little volume raise and discuss the largest and most troublesome of social issues. The book is true to its title. Trusts, corporations, gambling, justice, socialism and the single tax, each and all, are regarded from the economic and from the moral standpoint. The distinctively moral remedies predominate; and though they run dangerously near to that familiar commonplace, "Get the right sort of behavior and no problems will remain," yet there is not a dull page in the book. As in the other writings of Dr. Andrews, no trait is more constant than a certain moral fearlessness in dealing with his theme. Intellectual sympathy also never fails him. Whether he deals with the Marx socialism or the single tax, there is always a distinct friendliness in stating what may be finally rejected. If this is a possible weakness, it is also a source of real strength.

The book contains no stated theory of the relation which morals sustain to economics, but it is everywhere assumed that the relation is constant. There is hardly a concrete issue raised which is not made to depend ultimately upon the sort of character available to control the issue. "Give us the right kind of men and any scheme will work." With a host of conservative writers this has come to be a very dreary commonplace, in spite of its truth. No higher tribute can be paid to Dr. Andrews than to admit that he wholly rescues it from dullness. "We must get character first before any important social changes can take place," is just now the stop-gap argument, ignoring wholly all that change of organization may imply as a character-creating force.

The author is very careful to make large allowance for this by his general remedy — regulation, as against *laissez faire* upon the one side and socialism upon the other. It is made clear that bold and yet prudent regulation of social evils must at least be fairly tried before the socialistic program can have serious hearing. Principles are indeed laid down which would seem to put the author into permanent antagonism with anything like scientific socialism, as "economic merit" is found to inhere in wage-earning, interest-earning and profit-earning forms of private property. The Marx type of socialism is refuted chiefly by showing reasons why the cost-of-production theory will not hold. Average labor cost, or any of its multiples, is shown to be far less certain as a measure of values than the rough decisions of the present competitive tests.

With Fabian socialism the author has far more sympathy, although upon the main issue a sharp difference appears.

The presupposition of this doctrine [that of the Fabians] is in favor of state industry. I would take precisely the opposite ground. Let us retain the immense advantages of individual initiative with the accompanying results of maximum enterprise and inventiveness, wherever such initiative is not erected into an abuse of society. Let us resort to state agency only when, and so far as, this is rendered necessary by the power and disposition on the part of individuals and private corporations to maltreat the public at large.

It is denied further that this would lead to the same practical results as the Fabian program, it being implied rather that experience will show very questionable results from too wide an activity on the part of the state.

JOHN GRAHAM BROOKS.

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Gouverneur Morris. By THEODORE ROOSEVELT. [American Statesmen Series.] Boston and New York, Houghton, Mifflin & Co., 1893. — x, 370 pp.

That Gouverneur Morris stands in only the second rank of American statesmen, is freely conceded by Mr. Roosevelt. But it is a sound judgment that has assigned a sketch of Morris to a place in this series. His position in the politics of our earliest national life can be made to throw much light on the period in which he lived, and therefore is historically important. This position is very fairly set forth in the present work.

It is unfortunate, however, that the positive, dogmatic element in Morris's character awakens the corresponding chord in his biographer. In the first half of the book, where the career of his subject does not lend itself readily to the requirements of a fascinating narrative, Mr. Roosevelt seems to feel the necessity of compensating for the deficiency. The result is a series of interjected reflections in which chauvinistic patriotism is rather more conspicuous than relevancy. The series begins (pp. 4-7) with a vigorous denunciation of England's treatment of her American subjects. The Americans "warred victoriously for the right"; and the British were like the Catholics in the sixteenth century, and the Stewarts in the seventeenth, and the Confederate slave-holders in the nineteenth. Mr. Roosevelt's perfect acquaintance with the ultimate standard of "right" and "wrong," and the easy confidence with which he deals out

judgments on questions that occur, are the striking features of his writing here as elsewhere. So we find on page 29 that the "loyalists of 1776 were wrong . . . beyond question"; but naturally, not so frightfully wrong as the rebels in 1861. On pages 49-52 we see the absurdity of attributing the success of the Revolution to foreign aid. "It was on our own strength that we had to rely." We had our weaknesses, but in spite of them we were a great people; only it will not do to think that we had then anything like the magnificent qualities we displayed during the Civil War and have now. "But if the Americans of the Revolution were not perfect, how their faults dwindle when we stand them side by side with their European compeers!" The English were bad enough, in all conscience.

As for the other European powers, the faults of our leaders sink out of sight when matched against the ferocious frivolity of the French noblesse, or the ignoble, sordid, bloody baseness of those swinish German kinglets who let out their subjects to do hired murder, and fattened on the blood and sweat of the wretched beings under them, until the whirlwind of the French Revolution swept their carcasses from off the world they cumbered. [Pages 82-83.]

The force of this passage is marred only by the uncertainty in which the reader is left as to whose carcasses are referred to.

On pages 131-132 the author explains "the one great reason for our having succeeded as no other people ever has." The reason itself is not so important as the comfort to be found in the assurance that we *have* so succeeded, and in the knowledge as to just the volume and page where we may read in concise form how it happened. On pages 136-138, the great superiority of our constitutional convention to that of France is duly set forth. So the constitution produced "was not only the best possible one for America at that time, but it was also . . . *probably* the best that any nation has ever had." The word I have italicized is the only indication in the book of a faltering judgment on any point.

Not even in denouncing dogmatism does Mr. Roosevelt cease to be dogmatic. "It is simply idle folly to talk of suffrage as being an 'inborn' or 'natural' right" (page 149). But the people who talk that way merely put forward "nature" to take the responsibility for what is really their personal private conviction. Mr. Roosevelt prefers to express his convictions as absolute truth, without the authority of nature. Perhaps it is not so much in the distinction as in the resemblance between him and the natural rights people that the "idle folly" is to be found.

The latter half of this work, particularly the part dealing with Morris's European experiences, is interesting mainly for the view given of social conditions in the better classes at the outbreak of the French Revolution. In these chapters the author has less occasion for patriotic digressions. The opportunity recurs, however, in connection with the War of 1812 and Morris's Federalistic sympathies. Here the old fervor breaks out again; the French and English are berated in swelling terms, and scathing censure falls upon the New England separatists of the Hartford Convention.

Mr. Roosevelt has a clear head and a good historic sense. There seems to be a profound conviction of duty back of the style of writing which he adopts. He appears to feel that the nation is in peril if the good old-fashioned "stump-speech" patriotism is allowed to die out. Admirers of his ability would be gratified if he would embody in a book for boys all the matter of this sort that he deems necessary, and would give to adults the benefit of a different vehicle for his historical learning.

WM. A. DUNNING.

London and the Kingdom: A History derived mainly from the Archives at Guildhall. By REGINALD R. SHARPE. Printed by order of the Corporation under the direction of the Literary Committee. London, Longmans, 1894. — Two vols., xv, 566 ; xi, 650 pp.

The City of London is the only municipal corporation of England that has displayed much activity or interest in the investigation of its history and in the publication of its ancient records, though a few of the other boroughs (notably Nottingham) have recently bestirred themselves to make their muniments better known to the public. The City of London has not, however, always displayed wisdom in planning the work to be performed and in selecting the editors or authors to accomplish it. On the whole, Mr. Riley did good work, and the registers and records edited by Dr. Sharpe have given much satisfaction. Any one who has had intercourse with Dr. Sharpe in the dingy record room of the Guildhall knows that he has a knowledge of the records in his charge and a scholarly enthusiasm which go far to qualify him for the successful achievement of any historical work which the corporation of London may entrust to him. It is doubtful, however, whether the literary committee of the corporation have made the best use of their resources in directing his energies to the production of the book before us. London stands forth so prominently in the political annals of England that every historian of the king-

dom must often survey events as if they were "seen from the windows of the Gildhall." Hence the facts of general importance recorded in Dr. Sharpe's first two volumes are for the most part familiar, though new details of much value are made known.

What is most needed in connection with the history of London and other English boroughs is the publication of more records. It is probably difficult for the average alderman or councilman of London to appreciate the importance of such publications. Most of these officials are practical men, who are probably not eager to spend money in literary work, unless some more or less practical object is to be attained. To glorify the City of London by showing its prominence in the struggle for freedom in past ages, may justify the expenditure of money for a literary undertaking; while the utility of printing dry records may seem very dubious in the minds of the city fathers. The London alderman will doubtless glow with civic pride when, in the work before us, he reads such utterances as the following:

The spirit which had beaten back Swend and Cnut, the spirit which was in after times to make London ever the stronghold of English freedom, the spirit which made its citizens foremost in the patriotic armies alike of the thirteenth and of the seventeenth centuries, was now as warm in the hearts of those gallant burghers as in any earlier or later age. [Vol. i, p. 28.]

If, then, the most pressing want of historical students had been taken into account, Dr. Sharpe would have been asked to continue his publications of civic muniments. Next in importance to this stands the need of a good constitutional history of London — a clear account of the development of its municipal government. When Dr. Sharpe tells us, on page 144 of Volume I, that there was no royal *Itcr* for nearly half a century after 1275, we naturally ask: What was done regarding the trial of crown pleas during this long interval? What was the organization of the civic courts? and What were their relations to the royal judiciary? Again, when the troops and gilds of the city are mentioned, we long for more information regarding the military organizations of mediæval London and regarding the relations of the gilds to the municipal government. Norton's *Commentaries on the Constitution of London* is still useful, but a better constitutional history of that city ought to be at our disposal. Such a work would satisfy an actual want, whereas *London and the Kingdom* does this, if at all, only to a limited extent.

Within the limits of the task assigned to him, Dr. Sharpe has succeeded in producing a well-written and tolerably accurate work.

Some of his statements, however, are erroneous or doubtful. Thus in the first volume, the statement that Alfred founded the internal government of London (page 12), rests upon very meagre evidence, and the assertion that he established the system of frankpledge and that this system was carried further in the *Judicia Civitatis Lundoniæ* (page 14), is quite untenable. Our author says, on page 15, that the earliest mention of a gildhall in London occurs in these *Judicia*; but as a matter of fact, that document does not mention any gildhall. Is there any good authority for the statement, on page 27, that, according to Alfred's laws, the Witan were to meet in London twice a year for the purposes of legislation? We are informed, on page 60, that a man who underwent the water ordeal was declared innocent only in case "he sank to the bottom and was drowned"; but the contents of some of the early plea rolls indicate that a person might survive this test and be acquitted as innocent.

In dealing with the reign of Richard I, Dr. Sharpe would have found it profitable to make use of Mr. Round's essay on the mayoralty of London and of the introduction to Palgrave's *Rotuli Curie Regis*. Dr. Liebermann's valuable account of the *Leges Anglorum* throws much light on the relations of the Londoners to the Great Charter, but doubtless it was published after Dr. Sharpe's first volume had passed through the press.

The second volume extends to the year 1714; the third will complete the history of "London and the Kingdom," and will contain two Appendices, comprising a list of the city's representatives in Parliament from the earliest times and copies of important documents in the city's archives. I anticipate that these documents will be of considerable value.

CHARLES GROSS.

HARVARD UNIVERSITY.

The Meaning of History and Other Historical Picces. By FREDERIC HARRISON. New York, Macmillan & Co., 1894. — 482 pp.

Shortly after the death of Professor Froude a few months ago, a strange rumor became current in the English and the American press that the Regius Professorship of Modern History at Oxford, the chair which had been filled in turn by Stubbs, by Freeman and by Froude, was to be filled by the appointment of Mr. Frederic Harrison. The rumor was a startling one: readers of Mr. Harrison's charming magazine articles failed to see in them any qualification for the

holding of the most famous historical chair in England; and the tutors who for many years past have been building up the school of modern history at Oxford must have felt a thrill of indignation at the suggestion that they were to have as their professorial colleague the writer who recently in the pages of the *Fortnightly Review* grossly misrepresented their ideals and criticised their methods. It would have been, indeed, little less than a disaster for the spirit of scientific historical study in England if Mr. Frederic Harrison had been selected by Lord Rosebery to succeed Froude. Fortunately the danger was averted — indeed the rumor itself may have been entirely baseless — and Professor Freeman's intimate friend and deputy professor, Mr. York Powell, has been, to the satisfaction of all who are acquainted with his wide knowledge, his broad sympathies and his magnetic personality, chosen to fill the vacant chair. But the mere fact that Mr. Harrison's name was mentioned gives an added interest to this volume of reprinted magazine articles, which contains more than one chapter explanatory of Mr. Harrison's attitude towards history.

Of the seventeen essays contained in this volume, only four treat of history in the broader sense; the others are brilliant studies of Rome and Athens, and Constantinople and Paris, centennial articles on the French Revolution, a survey of the thirteenth century, studies on the new conditions of London and Paris, an appeal for the protection and preservation of ancient buildings, and the famous attack on "Palæographic Purism," which originally appeared in the *Nineteenth Century* in 1886. Of these miscellaneous essays it is unnecessary to say anything at the present time; when originally published, they attracted considerable attention, like everything Mr. Harrison writes, from the vivacity of their style, and they are excellent examples of the thoughtful reflections of a man of letters who has in his time read much history of men and things. Particularly striking are the articles on Constantinople, which abound in novel views and effective comparisons; but even Mr. Harrison himself could hardly have set forth these articles as justifying the mention of his name for a professorship of history. It is only upon the first four articles in the volume that Mr. Harrison's friends could base his claims to rank as a historian, and that, not because the essays show any evidence of historical work done, but because they express certain views upon history in general which might be regarded as proofs of fitness to direct the work of others. These four essays are entitled, "The Use of History," "The Connection of History," "Some Great

Books of History," and "The History Schools: an Oxford Dialogue;" and in them can be found Mr. Harrison's conception of history, as well as an appreciation of the great historians of all time.

At the time when Mr. Harrison's name was being freely mentioned for the chair at Oxford the consensus of educated historical scholars opposed to his the name of Samuel Rawson Gardiner. It was an open secret that Mr. Gardiner might have had the professorship if he had desired it, and that he preferred to remain in scholarly seclusion in order to complete his history of the period of the Commonwealth in England. The two men were pitted against each other by partisans on either side, and they may be regarded as representing the two opposite schools. Mr. Harrison's brilliant survey of the whole domain of history, exhibited in a readiness to discourse upon ancient Egypt, upon the empires of the East, upon Greece and Rome, upon the Catholic church, upon the mediæval city, upon the French Revolution, contrasts markedly with Mr. Gardiner's sober concentration upon the history of England in the seventeenth century. Mr. Harrison's acute remarks upon the great historical writers of all ages, from Herodotus to Carlyle, showing as they do a quite exceptional knowledge of the secondary writers upon all periods, contrast as markedly with Mr. Gardiner's conscientious examination of primary authorities. Mr. Harrison stimulates the imagination by daring comparisons and vivid word-painting upon well-known facts, while Mr. Gardiner, by patient research, discovers and relates the actual sequence of events in the field of history which he has made his own. Two of the reprinted essays in the volume under review were originally addresses delivered before University Extension students at Oxford, and they seem admirably fitted for such an audience, whereas Mr. Gardiner's elaborate and impartial works need considerable education and training for their right understanding and even for their patient reading. It may easily be guessed that to Mr. Frederic Harrison Mr. Gardiner is the living type of the minute and careful research which he himself regards as a very small part of the work of the historian, and it goes without saying that Mr. Gardiner's books do not appear in the list of those which Mr. Harrison recommends to Extension students. Only once does Mr. Harrison mention Mr. Gardiner by name, and he twice alludes to him in different essays merely as a typical and most laborious scholar. Far above Gardiner does Mr. Harrison rank Carlyle as an historical writer. In spite of the famous Scotchman's wonderful capacity for making mistakes, in spite of his inability to weigh evidence, in spite of his utter lack of

any sense of historical proportion, in spite of the gross and often willful carelessness with which he deals with his authorities, Mr. Harrison persists in regarding Carlyle as an historian, and even goes so far as to recommend his books as histories. Carlyle's *Cromwell* is called "one of the most splendid monuments of historical genius," and a "masterpiece of industry and genius;" and the unfortunate reader of seventeenth century history in England is recommended to supplement it by a study of Guizot — of Guizot! of all people in the world — and of Green's *Short History of the English People*. And again, Carlyle's *French Revolution* is styled, "a great book," "an enduring book," and "the most striking extant example of the poetical method applied to history;" although in the same breath Mr. Harrison admits that "Carlyle has too often proved to be extravagant or unjust and sometimes flatly mistaken in his facts." It is indeed a blessing for the future historians of England that Mr. Harrison is to have no share in their training, when he holds such extraordinary views about the true province of history as to rank the most conspicuous offender against the canons of historical truth of the last hundred years among the greatest of great historians. As a corrective to the extravagant views avowed by Mr. Harrison upon this subject, a careful study may be recommended of the recent article upon the scientific study of history in the *Fortnightly Review* by Mr. H. A. L. Fisher, one of the most accomplished of the younger school of Oxford historical teachers.

In conclusion, although Mr. Harrison's views on history may be deprecated, and his accuracy suspected, since he deals with equal ease with so many different subjects and so many remote and unconnected periods, it would be unfair not to admit his skill as a writer, and not to recognize that "the man of letters who has read much history" can invest his work with more subtle charms of style than the laborious scholar who patiently pieces together the history of the past and is apt to lose in the examination of details the broad grasp and deep insight which alone can win immortal fame for a writer of history.

H. MORSE STEPHENS.

CORNELL UNIVERSITY,
ITHACA, N. Y.

The Historical Development of the Jury System. By MAXIMUS A. LESSER, A.M., LL.B. Rochester, N.Y., 1894. — 12mo, 274 pp.

What we most need in the field of English legal history is original work, based on careful study of the sources: work such as is being

done by Brunner in Berlin, by Maitland at Cambridge, and by Ames and Thayer at Harvard. Until much more work of this sort has been done, mere digests of the literature are little needed. Mr. Lesser's book belongs to the latter class rather than to the former, and is, I regret to say, a very poor specimen of its class. It can hardly be termed a digest. It is more like a scrap-book. It is full of excerpts, and these are drawn with little discrimination from older authors whose construction of legal history was mainly guess-work, from magazine and cyclopædia articles which are of little more value than Mr. Lesser's own book, and from recent writers who have really investigated the history of the jury on the basis of the oldest written laws and documents. The juxtaposition of these heterogeneous clippings is rather bewildering to the student who knows something of their relative value. To the student who should begin his study of the jury with this book the problem of its development would surely seem insoluble.

The most important contribution to the history of the English jury is Heinrich Brunner's *Entstehung der Schwurgerichte* (Berlin, 1871). Brunner's book removed a large number of earlier hypotheses from the category of unproven to that of disproven; showed that Forsyth was right in attributing the establishment of the jury in England to the Norman kings; and that Biener was right in maintaining that the jury was first established in Normandy. But Brunner carried the history a long step further back. He not only showed the connection between the English verdict-finding jury (*Urtheiljury*) and the Anglo-Norman jury of proof (*Beweisjury*), but traced the latter back to the Frankish *inquisitio*. Mr. Lesser has read Brunner's book: he cites from it repeatedly, and adopts, in the main, its conclusions. But he must have compiled the greater part of his own book before reading Brunner, and he had not the courage to do what he should have done, — cut out the antiquated excerpts from the older literature.

As it is, the citations from Brunner and from the admirable supplementary articles of Professor Thayer¹ seem incongruous — an alien graft of fruit bearing branches on a barren stock. And as far as Brunner's book is concerned, the quotations, whether from haste or carelessness, are quite inaccurate. Some of the errors may charitably be attributed to bad proof-reading. So, on page 77, a statement is supported by a reference to Brunner's *Schwurgericht*, pages 54 59 and 205. The passages cited refer to quite other matters:

¹ The Jury and its Development, *Harvard Law Review*, vol. viii (1891-92).

the reference should be to page 399. So, again, a translation in Mr. Lesser's text (page 95) of a sentence from Brunner in which the latter gives the essential characteristic (*Merkmal*) of the Frankish *inquisitio*, begins with the words "no characteristic," which completely reverses the meaning. Mr. Lesser probably wrote "the characteristic." But in many other cases the author has clearly misinterpreted Brunner. If he had really digested either the *Schwurgericht* or any of the modern treatises on early Teutonic law which he cites, he could not speak of the *scabini* or *Schöffen* as "sole judges of fact as well as law," nor compare them to the Roman *judices pedanei* (page 52), when in fact these Teutonic representatives of the people simply decided which of the litigants was to prove his allegation and how he was to prove it. Nor, in speaking of the judicial duel, could he say (as he does on page 92, note 14) that "Brunner demonstrates its antiquity by reference to a capitulary of Louis the Pious . . . (A.D. 819)." He cites *Schwurgericht*, pages 189, 197, 198. Here are, in the first place, two printer's errors. The capitulary cited is of the year 817; and the references to Brunner should be to pages 68 and 198. But apart from these errors, the passage indicates a remarkable confusion of ideas. It implies that the judicial duel, with which the Germans came into authentic legal history centuries earlier, cannot be traced back beyond the ninth century. The purpose for which Brunner actually cites the capitulary is to show that, even after the Frankish emperors had instituted the practice of interrogating witnesses before they gave oath, the oaths of the witnesses were still conclusive unless their veracity was challenged by the declaration that they had perjured themselves; which challenge, as for centuries before, involved an appeal to the ordeal of battle. Brunner's point is that there was not yet, under the capitulary of 817, any weighing of evidence; proof by oath was still "formal," and conclusive unless challenged. Again, Mr. Lesser quotes Brunner as saying that the Frankish *inquisitio* "originated in the capitularies and documents of the Carolingian period" (page 94). What Brunner says is, that the capitularies and documents of the Carolingian period recognize (*kennen*) the *inquisitio*. Elsewhere he shows that the *inquisitio* was not established by legislation, with the assent of the magnates, but by administrative custom, and that the innovation was based on the equitable powers of the Frankish crown.

For a final illustration of Mr. Lesser's failure to assimilate the *Schwurgericht* I may cite his treatment of the Anglo-Saxon *secta*, to which he refers in three or four places. Nowhere is any hint given

of Brunner's interesting theory that the *sectatores* were originally simply witnesses to the complaint, and that their coöperation was required to make out a *prima facie* case and to serve as a bar to frivolous litigation.

How accurate or inaccurate the author's citations from other books may be I have not undertaken to determine. I have examined only some of his references to Brunner.

MUNROE SMITH.

State Papers Relating to the Defeat of the Spanish Armada.

Edited by J. K. LAUGHTON for the Navy Records Society. Printed for the Society, London, 1894. — Two vols., 365, 418 pp.

About ten years since, a well-known Spanish naval officer, Captain Duro, published, in a work called *La Armada Invencible*, an immense number of Spanish documents relating to the invasion of England in 1588. Now an English naval officer, Professor Laughton of King's College, London, has edited, in two handsome, well-printed volumes, all the important English documents relating to the strictly naval aspect of this invasion. The editor has prefaced his collection of state papers by an introduction (74 pages) in which he gives the conclusions to which his researches have led.

For the narrower and purely naval aspect of the Armada we now have ample materials in the publications of Duro and Laughton. And it was fitting that the latter, editing for a Navy Records Society, should devote himself, not only in the choice of documents, but in the introduction, almost exclusively to this aspect. On the other hand, it is for the same reason strange that the editor deems it "unnecessary here to describe the fights of that eventful week" (page lii). For it is certainly possible, by a careful and critical comparison of the authentic English and Spanish evidence now before us, to give step by step a fairly accurate account and explanation of the channel fights. And it is desirable, at this time of special interest in the influence of sea power upon history, to know exactly what happened in those summer days of the year 1588, when the English sailors turned the history of the world towards a new and happier goal.

Professor Laughton gives several very interesting pages (xliv ff.) to a comparison of the English and Spanish guns. Unfortunately the data are not adequate to his purpose. We have an official description of the guns of only two Spanish ships. The armaments of the others (table, page xlv) are taken from a Spanish document dated July 9, 1587, compared in the case of the *San Lorenzo* with the somewhat loose report of an Englishman who boarded her off

Calais. On account of its date, the Spanish document proves nothing in regard to the armaments in the channel fights. It is known, for example, that on March 14, 1588, Philip ordered the armaments to be strengthened. The document, indeed, differs decidedly from the official inventory taken at Lisbon (May, 1588).

The statement (page xliv) that the Spanish guns were "as a rule . . . small — 4, 6 or 9-pounders" seems to be based largely on the fact that Medina Sidonia, August 5, 1588, sent a messenger to Parma asking for balls of 4, 6 and 10 pounds. The conclusion is rather hasty. The smaller guns could naturally be fired more easily and quickly; the balls assigned to them may thus have been sooner used up.

We have no exact information about the armament of the English ships. The figures given in Professor Laughton's tables are taken from papers dated 1586, 1595, 1595-99. The unsatisfactory nature of the evidence is illustrated by the fact that in respect to each of the three ships *Tiger*, *Rainbow* and *Vanguard* the armament in 1586 differs very widely from that in 1595-99.

Perhaps we can arrive at a fairer appreciation than Professor Laughton's of the relative strength of the Spanish and English armaments by comparing the ships which, according to the Spanish and English documents, bore the brunt of battle in the channel. The armaments of the English ships must unfortunately be taken from the unsatisfactory list of 1595-99. On the next page the principal facts are presented in tabular form.

According to this evidence no English ship had more guns than *Victory*, 46. Of the twenty-two Spanish ships eight had more than this, with a maximum of 52. The armament of *San Lorenzo*, to which Professor Laughton's table assigns a broadside of 330 pounds, was probably little heavier than that of the other three galleasses; seven of the squadron of twenty-two probably had an armament superior or similar to *N. S. d. Rosario*, to which Professor Laughton assigns a broadside of 200 pounds; seven an armament ranging between *N. S. d. Rosario* and *San Salvador*, to which Professor Laughton assigns a broadside of 185 pounds. This leaves only four equal or inferior to *San Salvador*. Moreover, the light armament assigned in Professor Laughton's tables to *Anunciada* and *Sta. Maria* has no authority except the unreliable document of July 9, 1587.

Of the English squadron of fifteen none could deliver a broadside materially heavier than the Spanish *San Lorenzo*, and only three a broadside as heavy, so that the four galleasses and these three ships

SPANISH FLEET.

SHIPS' NAMES.	TONS.	NUMBER OF GUNS.
S. Juan de Portugal	1050	50
Rata	820	35
San Mateo	750	34
San Felipe	800	40
San Martin	1000	48
Gran Grin	1160	28
Regazona	1249	30
Santa Ana (Oquendo)	1200	47
San Marcos	790	33
San Xpobal	700	36
San Juan (D. Flores)	530	24
S. Juan d. Sicilia	800	26
Veneciana Valencera	1100	42
Begonia	750	24
S. Luis	830	38
Gal. Florencia	961	52
Santiago	520	24
Juan Bautista	750	24
Each of four Galeasses . . . . .	.....	50

ENGLISH FLEET.

SHIPS' NAMES.	TONS.	GUNS, 6-POUNDERS AND OVER.	GUNS SMALLER THAN 6-POUNDERS	TOTAL OF GUNS.	APPROXI- MATE WEIGHT OF BROADSIDE.
Revenge	500	.....	.....	.....	.....
Victory	800	39	7	46	216
Ark	800	38	6	44	324
Golden Lion	500	35	9	44	222
Nonpareil	500	32	8	40	222
Mary Rose	600	29	3	32	216
White Bear	1000	31	9	40	336
Eliz. Jonas	900	35	9	44	292
Rainbow	500	26	.....	26	232
Vanguard	500	31	.....	31	241
Eliz. Bonaventure.	600	33	6	39	246
Dreadnought	400	27	6	33	157
Swallow	360	.....	.....	.....	.....
Hope	600	30	6	36	244
Triumph	1100	38	6	44	336

probably had similar armaments. Ten others of the fifteen English ships were similar or superior to *N. S. d. Rosario* in weight of broadside. These would correspond to the seven Spanish ships mentioned above. The two remaining English ships were inferior in weight of broadside to *San Salvador*, whereas the Spaniards had seven ranging between *N. S. d. Rosario* and *San Salvador*. The mere superiority in the number of important ships of course greatly raised the number of Spanish guns.

The Spanish squadron of twenty-two carried an average of 38 guns of all sorts; the English squadron of thirteen,¹ an average of $32\frac{8}{3}$ guns firing a ball of 6 pounds and over, and $38\frac{4}{3}$ guns of all sorts. The average numbers of guns of all sorts, therefore, were almost equal; while, looking only at the ships which did the hardest fighting and practically decided the contest, the Spaniards had absolutely very many more guns than the English. Our data further indicate that the armaments of many of the twenty-two Spanish ships compared not unfavorably in weight with those of the English squadron of fifteen.

In all this it must, however, be remembered that our evidence is unsatisfactory. The above discussion is meant simply to show this, and to modify the somewhat misleading statement that the Spanish guns were neither "numerous" nor large, but "as a rule . . . 4, 6 or 9-pounders."

From the mass of valuable things in the book I should single out for special mention the "Relation of Proceedings" (I, p. 1) and the proof of its authenticity (II, 338); the explosion (p. lxxvii) of the story of David Gwynn, which Motley tells with such enthusiasm; the discussion (p. lvii) of the causes of the illness in the English fleet, Professor Laughton concluding, in opposition to Froude, that it was not due to sour beer and putrid beef, and that the queen did not deliberately starve the seamen; lastly, the origin of Palavicino's proposal to Parma (II, 198).

Professor Laughton is to be congratulated upon having made an invaluable contribution to history. His book is a graceful and peculiarly fitting monument to the glory of a reign that made England mistress of the seas.

W. F. TILTON.

CAMBRIDGE, MASS.

¹ Omitting *Revenge* and *Swallow*. The latter would have lowered the average.

RECORD OF POLITICAL EVENTS.

[From November 5, 1894, to May 16, 1895.]

I. THE UNITED STATES.

FOREIGN RELATIONS. — Certain incidents under this head have assumed greater prominence than the mere facts seem to warrant through the activity of a political group, embracing Democrats as well as Republicans, which aims to commit the United States to an aggressive foreign policy and to a vigorous policy of self-assertion and of territorial expansion. This group has manifested some strength in Congress and through the press, and has especially antagonized the administration, because of President Cleveland's attitude on Hawaiian and Samoan affairs. In connection with affairs in Latin America, much has been said as to the duty of interference by the United States as against European powers under the principles of the Monroe Doctrine. — Renewed rumors as to Great Britain's intention to establish a protectorate over the **Mosquito Coast** attracted some attention in November. The British government, however, gave explicit assurances that it neither desired nor intended to assert such a protectorate; and a convention was entered into between Nicaragua and the Indians which declared that the latter, while retaining certain privileges, became subject to the political and administrative authorities of Nicaragua. In connection with Great Britain's proceedings against Nicaragua in the spring (see below, p. 387) it was announced that the British government had satisfied the United States that no acquisition of territory was contemplated. — A grievance against Spain arose out of the **Alliança affair**. On March 8 the United States mail steamship *Alliança*, while passing the eastern point of Cuba, was fired upon with solid shot by a Spanish gunboat, which was stationed at that place to cut off communication by the insurgents with Hayti. The *Alliança's* captain claimed that he was on the high sea, six miles from the Cuban coast. On March 15, Secretary Gresham, through the American minister at Madrid, demanded of Spain "prompt disavowal of the unauthorized act," and insisted upon "immediate and positive orders" to Spanish commanders not to interfere with legitimate American commerce. On April 28 it was announced that Spain, after investigation, acknowledged that a mistake had been made and would make appropriate reparation. — The administration's **Hawaiian policy** has been watched with especial vigilance by the friends of annexation. On December 19 was made public a report of Admiral Walker, who had commanded a United States war ship at Honolulu in the preceding summer. In the report the admiral expressed deep suspicion as to British projects and influence in Hawaii, and strongly urged

that our navy should be represented at Honolulu as long as a British war ship was there. The despatches of the American minister, Mr. Willis, put an entirely different and wholly innocent construction on the incidents on which Admiral Walker's suspicions were founded. On January 9 President Cleveland transmitted to Congress, with a recommendation of favorable action, a request from the Hawaiian government that the United States should consent to the lease of an uninhabited island by Hawaii to Great Britain, to be used as a landing for the proposed cable between Canada and Australia. By the existing reciprocity treaty between Hawaii and the United States such a lease to any other foreign power is prohibited. No action was taken by Congress in the matter. Upon the news of the royalist uprising in Hawaii (see below, p. 387) much fault was found with the administration because no United States war ship was there at the time. A vessel was promptly sent, but on January 20 President Cleveland made a public statement that it was sent "not because there has been any change in the policy of the administration," but "from motives of extreme caution," because of possible danger to American citizens. The commander's instructions explicitly forbade him to extend protection to any American citizen who should have participated in the civil commotions. On February 21, Secretary Gresham asked for the recall of Mr. Thurston, the Hawaiian Minister at Washington, on the ground that the latter had furnished to the press matter reflecting on the administration. — A treaty with Japan, on the same lines as the Anglo-Japanese convention mentioned in the last RECORD, was concluded at Washington November 22, and was ratified by the Senate January 30. — Late developments in connection with the **Bering Sea seal fisheries** have caused some discussion. Statistics of the catch during the last season show that the pelagic sealers, chiefly Canadian, took 60,000 seals, mostly females, while the government's lessees at the Pribyloff Islands took only 16,000, which, as required by law, were all males. Since in former years the catch at the islands easily reached 100,000, Secretary Carlisle has expressed the conviction that, despite the regulations agreed to by the Paris arbitration, the herd is doomed to extinction within five years. These regulations have had no effect in decreasing the pelagic catch; it has, on the contrary, greatly increased. Secretary Gresham's offer of \$425,000 in settlement of the claims of Canadian sealers against the United States (see last RECORD, p. 762) failed to secure the approval of Congress, the opposition contending that the proportion of claims allowed was excessive, and that some of the parties in interest were in fact American citizens. A proposition to appropriate money for a joint commission to determine the proper amount to be paid also failed, and upon the adjournment of Congress, the administration entered into negotiations with Great Britain for the settlement of the claims by arbitration.

INTERNAL ADMINISTRATION. — The first change in the *personnel* of the cabinet was announced by the resignation of Postmaster-General Bissell February 27. His retirement was due to personal business consid-

erations, and Congressman William L. Wilson, of West Virginia, was at once nominated and confirmed as his successor. The change took effect April 4. — In accordance with an act of Congress carrying out the recommendations of a joint commission (the Dockery Commission) on the business methods of the executive departments, a reorganization of the methods of the Treasury Department has been carried into effect. The most important change is in the accounting system. The offices of first and second comptroller and commissioner of customs have been abolished and their functions assigned to a single comptroller of the treasury, while the auditing business has been so arranged that each of the auditors has charge of all the accounts of a particular department. Reductions of 176 in the clerical force, and of nearly \$250,000 annually in expenses, have been effected by the reorganization in the accounting system alone. Other reforms, both in the Treasury and in other departments, bring the saving up to a much larger figure. — The annual report of Postmaster-General Bissell contained some important suggestions as to the **postal policy** of the government, which were endorsed by the president in his message to Congress. The deficit for the last fiscal year was nine millions, which Mr. Bissell thought could be reduced, but not extinguished, in the next two years. He announced a considerable saving through the abrogation of the subsidies for South American service, and laid the chief responsibility for the deficit upon the abuses that had grown up in connection with second-class matter. The handling of such matter, he showed, cost eight times as much as it brought in to the government — a fact that was due to the practice of entering as periodicals publications that in no proper sense fell into such a category. The postal telegraph and the extension of free delivery to rural districts he held to be undesirable and too expensive for this country. And finally, he made an earnest plea for some system by which the postmaster-general should be relieved from the burden of appointing fourth-class postmasters. — The inadequate administration of justice in the Indian Territory attracted considerable attention during November. Bands of desperadoes committed many robberies and murders, frequently "held up" railroad trains, and in some instances took possession of good-sized towns. The worst of the outlaws were ultimately captured by the national authorities. Attorney-General Olney, in his annual report, ascribed these recurring evils to insufficient appropriations for the expenses of the marshals in that wild and sparsely peopled country. It was recommended that a federal court be established in the Territory to exercise the jurisdiction that had hitherto fallen to the federal courts of Texas and Arkansas. — In December a further **extension of the classified service** was made by two orders of President Cleveland. By the first order, issued on the 7th, some 150 offices in the Geological Survey of the Department of the Interior, involving for the most part scientific and technical qualifications, were brought under the system of competitive examination; and on the 12th a similar order was issued with reference to storekeepers, gaugers and

clerks in the internal revenue service of the treasury, affecting in all about 2600 places. Mr. Roosevelt, of the Civil Service Commission, resigned his position April 30, to take office in the municipal government of New York.

THE FINANCES AND THE CURRENCY. — The difficulties of the treasury, on account of the deficit and of the diminution of the gold reserve, have constituted the leading topic in national politics during the period under review. During the first half of November, with the gold reserve at about \$62,000,000, and with expenses still ahead of receipts, the approach of a season when large export withdrawals of gold are usual led to the **first bond issue**. On November 13 subscriptions were invited for \$50,000,000 in ten-year five per cent bonds. On the 26th the whole issue was awarded to a syndicate at 117.077 — making the rate of interest 2.878 per cent. The proceeds of this loan raised the treasury gold in the first week in December to \$112,000,000, which sum, however, began at once to dwindle. Meanwhile, at the meeting of Congress, the secretary of the treasury had embodied in his report, with the president's approval, what became known as the **Carlisle scheme of currency reform**. The facts chiefly responsible for the treasury's inability to keep its gold, Mr. Carlisle pointed out, were the statutory requirements (1) to redeem in coin and then to reissue the government's notes, and (2) to maintain the parity of two kinds of coin of unequal intrinsic value. A prime necessity was to disconnect the treasury from any concern in the issue or reissue of legal-tender notes. But this would be expedient only on condition that provision could be made for a safe and elastic currency. To secure this the secretary proposed a reorganization of the national banking system on the following lines: Repeal the laws requiring the banks to secure their circulation by deposit of government bonds; permit the banks to issue notes up to 75 per cent of their capital, to be secured by (1) a guarantee fund of legal-tenders deposited by each bank amounting to 30 per cent of its circulation, (2) individual liability of the stockholders, and (3) a safety fund amounting to five per cent on the total circulation, to be made good, in case of impairment, by assessment of all the banks; abolish the requirement of a bank reserve on account of deposits; and repeal the tax on the circulation of such state banks as may conform to requirements for security substantially the same as those applicable to national banks. A capital advantage of this plan was held to be the protection given to the treasury against demands for redemption of the legal tenders, by the use of the latter in the guarantee fund. A bill embodying this plan was introduced in the House early in December, and after some changes in details, was approved by a Democratic caucus January 7. Two days later, however, the House refused, by 129 to 122, to accept the resolution of the committee on rules under which the bill was to be pressed to its passage, and this vote was a death-blow to the measure. The main elements in the opposition to the plan were on the one hand, the Republicans and Eastern Democrats who objected to a revival of state-bank currency and favored funding the paper currency,

and on the other hand, the Democrats and Western Republicans who felt that the bill left no hope for the free coinage of silver. — Various attempts in the Senate to formulate some plan that should give promise of success failed one after another, and meanwhile the treasury's gold was disappearing at an alarming rate. On January 28 the amount stood at \$52,463,173, the lowest point ever reached since resumption in 1879. On that day an energetic special message from President Cleveland presented to Congress in outline **the administration's second project as to the currency.** The message dwelt especially on the need, often urged before, of power to issue a low rate bond, and on the absurdity of the arrangement under which the outstanding treasury notes could be used over and over again to drain away the gold. The recommendations included (1) the issue of a fifty year three per cent bond, payable in gold, the proceeds to be used in maintaining the treasury's gold reserve and in redeeming legal tender and treasury notes; (2) the cancellation of all notes so redeemed; (3) permission to national banks to circulate notes up to the par value of bonds deposited, such notes to be of denominations greater than \$10; (4) the limitation of silver certificates to denominations less than \$10; and (5) the requirement that import duties be payable only in gold. The president intimated that the failure of legislation would be followed by another bond issue on the old lines. A bill embodying the president's recommendations was, after sharp discussion, brought to a vote in the House February 7, and was rejected by 135 to 162. During this debate the Republicans took the formal ground that one important cause of the treasury's difficulties was the inadequate revenue provided by the last tariff act. The failure of this bill was followed quickly by **the second bond issue.** The drain of gold had been greatly accelerated during the debate, and on the day of the vote the treasury held only \$41,743,136. Much of the metal withdrawn was not for export, but for hoarding, and in some circles a serious panic was apprehended. On the 8th of February the president, in a message to Congress, announced the conclusion of a contract with the banking houses of Belmont, Rothschild and Morgan for the purchase of 3,500,000 ounces of gold, to be paid for in thirty-year four per cent coin bonds, on terms which made the price of the bonds about 104½, and their amount \$62,317,500. The contract provided that half the gold should be procured abroad, and gave to the government the privilege of substituting, within ten days, three per cent gold bonds at par for the coin four per cents, if legislation should authorize the issue of the former. The president pointed out the advantages of such legislation, showing that the substitution of "gold" for "coin" in the redemption clause would save half a million yearly in interest. Under other provisions of the contract, revealed when it was made public on the 13th, the bankers concerned were given an option on any other bonds that might be issued up to October 1, and on their part undertook "to exert all financial influence and [to] make all legitimate efforts to protect the treasury of the United States against the withdrawal of gold" during the period allowed

for the performance of their contract. The administration's operation excited violent hostility among the silver men, and many Republicans censured the contract as less favorable than might have been obtained. A resolution to authorize the issue of gold bonds, as suggested by the president, was introduced in the House, but was rejected February 14, by 120 to 167. A point insisted upon by the opposition was that, whereas our "coin" obligations had always hitherto been paid in gold, the proposed change would imply a change of policy in this respect and would therefore be ruinous to our credit. When, upon the failure of legislation, the syndicate began to put the four per cents upon the market, the loan was eagerly taken up in both London and New York, and the market quotation of the bonds rose at once to as high as 118. This fact occasioned violent attacks on the administration, both in Congress and out, for having accepted so low as 104½. In defense it was shown that a suspension of gold payments, at least at the New York sub-treasury, was within forty-eight hours of realization when the contract was made, and that this fact put the government at the mercy of the bankers. — **The deficit in the revenue** continued throughout the period under review to complicate the general situation. Secretary Carlisle's report to Congress announced that the deficit for the year ending June 30, 1894, was \$69,803,260. He estimated for the current year a deficit of \$20,000,000, and for the succeeding year a surplus of over \$28,000,000. The probability of improvement he based on expectations of future returns from the sugar tax, the reduced woolens duties, which would become operative after January 1, 1895, and the income tax, which would not begin to be productive till July, 1895. An improvement in revenue was manifested during the winter, but failed later to realize anticipations, and at the close of the RECORD a deficit of at least \$45,000,000 seemed probable for the fiscal year. The income-tax decision (see below, p. 369) was held responsible in a large degree for the failure of the treasury's estimates. Shortly after April 15, when the returns, as amended to conform to the court's decision, were all in, the net revenue to be expected from the tax was found to be less than fifteen millions. — A concerted movement for a **National Free Silver Party** in the West and South has attracted considerable attention during the spring. A definite attempt to commit the national committee of the Populists to temporary abandonment of all but the free-coinage plank of their platform failed. But much sympathy with the free-coinage movement has been displayed by many Democratic and Populist state organizations, and in Illinois and several other states a total disruption of the Democratic Party at one time seemed imminent. A large convention of Western silver men was in session at Salt Lake City in the middle of May.

CONGRESS. — The third session of the fifty-third Congress opened December 3. President Cleveland's annual message was quite destitute of sensational features. The review of foreign relations was held to demonstrate the advantage of adhering to "a firm but just foreign policy, free from envious or ambitious national schemes, and characterized by entire honesty

and sincerity." The president's most important suggestion was a repetition of that made in the preceding year, looking to a withdrawal from the existing Samoan treaty. As to internal affairs, the following were among the recommendations made, in addition to the endorsement of those made by heads of departments and noticed elsewhere in this RECORD: That money be appropriated for additional battle ships and torpedo boats for the navy; that adequate protection be provided for our forest reserves and that a comprehensive forestry system be established; that the further allotment of land in severalty to Indians be very cautiously made, and with modifications in method that shall obviate the conspicuous evils developed by the system hitherto; and finally, in connection with the tariff, that coal and iron be put on the free list, that the differential duty on sugar from countries paying an export bounty be abrogated, and that foreign built ships be admitted to American registry. — The session of Congress was not productive of legislation outside of the usual routine. Currency questions excited the most attention, and these are noticed elsewhere. In connection with the tariff and income tax legislation of the last session, a feeble attempt was made in the Senate to take up for action the so-called "pop-gun bills" for adding coal, iron and sugar to the free list, passed by the House in August (see last RECORD, p. 765). A test vote on taking up the Sugar Bill was decided in the negative, December 12, by 27 to 23, and the general sentiment against any tariff changes dominated the Senate during the remainder of the session. In the House a bill to repeal the differential duty of one-tenth of a cent on sugar from countries which paid an export bounty was passed, January 29, by 239 to 31. To mitigate the injustice done to sugar producers by the abrupt stoppage of the bounty at the passage of the last tariff act, an appropriation of \$5,238,289 was made to prolong the payment of the bounty so as to affect sugars produced before June 30, 1895. As no appropriation had been made at the previous session for the expenses of collecting the income tax, an urgency deficiency bill providing the money was passed in January, and by joint resolution the time within which returns of income must be filed was extended from March 1 to April 15. A demonstration against the administration's Hawaiian policy was involved in a vote of the Senate, February 9, authorizing the president to contract for laying a cable to Hawaii. The proposition passed the Senate 36 to 25, but was lost in the House by 152 to 114. The friends of a strong foreign policy also found especial interest in the bill for incorporating a Nicaragua Canal Company, which passed the Senate January 25 by 31 to 21. Under this bill the United States was to guarantee the company's bonds and was to hold seven-tenths of the \$100,000,000 of capital stock. The bill was not acted upon by the House. Important measures on which the House of Representatives acted were as follows: An amendment to the Interstate Commerce Act by which "railway pooling," previously prohibited, is permitted, under the supervision of the Commission — passed December 12, by 164 to 110; a bill to refund the debts of the Pacific railways — recom-

mitted without instructions, February 2, by 177 to 108; a Compulsory Arbitration Bill, providing for the settlement of labor disputes by arbitrators, whose decision should be enforceable by the United States courts acting as courts of equity—passed without division February 26.—According to the statement of the chairman of the appropriations committee the total appropriations by the fifty-third Congress amounted to \$990,338,691, about thirty-seven millions less than those of the preceding Congress, the difference being due chiefly to the pension account.

THE FEDERAL SUPREME COURT.—The decision on the **Income Tax Cases**, several of which had been pushed through to the highest tribunal since the process of collection was begun in January, was rendered April 8. The constitutionality of the law had been assailed on a variety of grounds, and the judgment of the court was as follows: 1. So much of the act (see this RECORD for June, 1894, p. 355) as attempts to impose a tax upon the rent or income of real estate without apportionment is invalid; since such a tax is a tax on real estate, and is therefore a "direct tax," which must under the constitution be apportioned among the states. 2. The act is invalid so far as it attempts to levy a tax on incomes from state or municipal bonds; since such a tax is a tax on the power of a state to borrow money, and is therefore unconstitutional. On the other important points presented by the cases it was announced that the court, Justice Jackson being absent through illness, was evenly divided. The questions involved in this announcement were: 1. Whether the void provisions as to income from real estate invalidated the whole act. 2. Whether, as to the income from personal property as such, the act was unconstitutional as laying direct taxes. 3. Whether any part of the tax, if not considered as a direct tax, was invalid as not fulfilling the constitutional requirement of uniformity. Upon a petition by counsel for a rehearing upon the whole case, in order to determine the unsettled points, the court ordered, April 23, that in the event of Justice Jackson's speedy recovery, which was expected, a rehearing would be had. Accordingly counsel were heard by the full bench May 6–8, but no decision had been made at the close of this RECORD.—In the case of *United States vs. the E. C. Knight Co. et al.*, which was a suit instituted by the attorney-general against what was formerly the Sugar Trust, the supreme court, January 21, held: That the contracts and acts through which the American Sugar Refining Company absorbed certain Pennsylvania corporations, and thus secured control of about 98 per cent of the refining business of the country, related exclusively to the acquisition of a manufacturing business and "bore no direct relation to commerce among the several states or with foreign nations"; and that therefore the combination thus effected was not illegal under the Anti-Trust Act of 1890. In connection with **questions of interstate commerce** the following decisions have been rendered: *Plumley vs. Commonwealth*, December 10: Held, that the Massachusetts law prohibiting the sale of substances colored to imitate yellow butter, did

not, when applied to oleomargarine imported from another state and sold in the original package, conflict with the exclusive right of Congress to regulate interstate commerce. *Emert vs. Missouri*, March 4: Held, that the Missouri act requiring a peddler's license of every one who carried about commodities for sale, did not, when applied to the agent of a manufacturer in another state, conflict with the interstate commerce clause. *Coal Company vs. Bates*, March 4: Held, that coal brought in boats from Pennsylvania to Louisiana and remaining in the boats pending use or sale was subject to taxation by the latter state, and that the collection of a state tax was not an unconstitutional restriction of interstate commerce.

THE ELECTIONS. — The result of the voting throughout the country on November 6 was an overwhelming triumph for the Republicans. As to **Congress**, for the House of Representatives a Republican majority of about 140 was returned, and the control of the Senate was lost by the Democrats through the changes in the state legislatures. Many of the most prominent Democrats in the House failed of reelection, among whom were Wilson of West Virginia, Springer of Illinois, Holman of Indiana, and Bland of Missouri. In twenty four states, including New Jersey, West Virginia, Connecticut and Indiana, the Democrats failed to elect a single member, and in each of six others but a single non-Republican was returned. Pennsylvania chose two Democrats out of 30 members; Illinois, two out of 22; Ohio, two out of 21; and New York, five out of 34. The returns of the voting for **state officers** showed the same general results. Great Republican majorities were the rule. Thus in New York Senator Hill, the Democratic candidate for governor, was defeated by ex-Vice-President Morton by 156,000; Illinois and Wisconsin, which went over to the Democrats in 1892, now came back into the Republican line by 123,000 and 54,000 respectively. Most significant of the results, however, were the losses of the Populists in the West and of the Democrats in the South. Four Western states whose government had been under Populist control — Kansas, Colorado, North Dakota and Idaho — were carried by the Republicans. In Nebraska the fusion (Populist and Democratic) candidate for governor was elected, while the Republicans carried the rest of the ticket. In the border states of the South heavy Democratic losses were the rule. Delaware, Maryland, West Virginia and Missouri went strongly Republican on Congressional or state tickets, or both. In North Carolina a Republican-Populist fusion secured the legislature and most of the Congressmen. The Republicans gained one Congressman in Virginia, one in Texas and two in Tennessee. In Tennessee the Republican candidate for governor, Evans, had 700 majority on the face of the returns. But the legislature, which had a Democratic majority, declined to recognize his election, instituted an investigation of alleged frauds, and on May 3 adopted a report of the committee declaring the Democratic candidate, Turney, elected. The latter was accordingly inaugurated May 8. The Populists in Alabama secured one Congressman, and Kolb, their candidate for gover-

nor, claiming that the majority against him was due to fraud, took the oath of office as elected, but made no further effort to assert his position. Elsewhere in the South the normal Democratic majorities appeared, not even the formal revolt of the Louisiana sugar planters showing any influence on the returns. — Considerable interest was excited by the question as to the influence of the **American Protective Association** in the elections. This organization, popularly known by the initials A. P. A., first manifested itself in the West some five years ago, and has now extended throughout the country. It is a secret association, devoted to resisting the influence of foreigners, and especially of Roman Catholics, upon American life. The methods of its activity vary widely in different places, and both methods and results are largely conjectural, owing to the secrecy which characterizes the order. In general its work seems to be more in connection with local and municipal politics than in the broader field, and it takes especial interest in educational matters. The officers of the association claimed that the result of the elections in November was largely due to its work; but so far as the external evidence goes, there is little basis for this claim. Any suspicion of affiliation with the A. P. A. was manifestly dreaded by the political leaders of both parties, as likely to do more harm than good. — Spring elections for various state officers in Rhode Island, Michigan and Wisconsin showed the same Republican majorities as before.

LABOR INTERESTS. — In this field attention has centered chiefly on the later developments in connection with the great railway strike of last summer. A commission appointed by President Cleveland to investigate the strike, and presided over by Labor Commissioner Wright, made its report in November. After a long and impartial consideration of the different causes working to bring about disputes between railroad corporations and employees, the report recommended: (1) that a permanent national strike commission be established, with powers of investigation and recommendation in such disputes, its decisions to be enforceable summarily by the courts, and discharges of employees by the companies as well as strikes or boycotts by the employees to be unlawful pending the commission's action; (2) that the various states adopt some system of conciliation and arbitration similar to that in Massachusetts, and prohibit by law contracts requiring men not to belong to labor organizations; and (3) that employers recognize and deal with labor organizations, keep as closely as possible in touch with labor, raise wages voluntarily when possible, and give reasons for reductions when such are necessary. — The decision of the court in the case of Debs and others, charged with contempt in violating the great injunction of July 2 (see last RECORD, p. 770), was announced at Chicago December 14. Judge Woods held that under the Anti-Trust Law of 1890 the action of the strikers was illegal, that the court had power to restrain their acts by injunction, that the defendants violated the injunction, and that they were therefore in contempt. Accordingly he sentenced Debs to six months, and the others to three months, in the county jail. On an

application for a writ of *habeas corpus* the case was brought before the supreme court at Washington, where it was argued in March. Pending this appeal the trial of the prisoners on the indictments for conspiracy was postponed, and on April 28 the postponement was made indefinite by the government, on the ground that all the vital facts were before the supreme court, and hence further action on the indictments would be persecution. — The only strike of any especial magnitude during the period under review was that of the trolley-line employees in Brooklyn, N. Y., in January. Travel by the surface street-cars was for a time almost entirely stopped in the city, and order was maintained with difficulty by two brigades of militia. The companies readily secured men to take the places of the strikers, and the latter ultimately abandoned the strike. — In the great labor organizations the only important event was the defeat of President Gompers of the American Federation for reelection, and the choice for the position of John McBride, the leader of the Mine Workers, whose successful strike was noticed in the last RECORD. This change involved the transfer of headquarters from New York to Indianapolis.

VARIOUS STATE LEGISLATION. A great many propositions respecting **constitutional amendments** were voted upon at the November elections. The question of calling a convention for revision was decided affirmatively in Delaware and South Carolina (though not without question as to the returns in the latter state), but failed in New Hampshire to elicit enough votes to constitute a valid answer. In New York the revision of the constitution noticed in the last RECORD was ratified by a large majority. Michigan adopted a proposition excluding from the suffrage aliens who had merely declared their intention to become citizens of the United States. In California nine amendments were voted upon, of which seven were ratified. Of the seven the most important were (1) that requiring as a qualification for the suffrage that the citizen shall be able "to read the constitution in the English language and write his name"; (2) that exempting young fruit and nut trees and grapevines from taxation; and (3) that forbidding the ownership of real estate by aliens. One of the rejected propositions provided for an increase in the salary of members of the legislature. — **The woman suffrage question** has been before the public in a variety of forms and with a variety of results. In Colorado the women made free use of the right which they enjoyed for the first time at the election in November, and the overthrow of the Populists was said to be attributable in some measure to the new voters. Kansas rejected the proposed constitutional amendment giving women the full suffrage by 130,000 to 95,000. Resolutions for the submission of a like amendment passed the Oregon legislature in February and the New York legislature in April. In Maine a woman-suffrage bill, after passing the lower house, was rejected by the Senate, March 20. In Wisconsin, also, a similar bill failed to pass. On the 5th of April the convention engaged in the formation of a state constitution for Utah adopted a woman-suffrage clause by 75 to 15. This clause was

stoutly opposed by the Gentile element both in and out of the convention, on the ground that it would especially favor the Mormons. — Among the important **judicial decisions** on state laws have been the following: At Cincinnati, March 30, the Ohio direct inheritance tax was declared unconstitutional, as being in the nature of an excise, but not uniform in its operation; at Mt. Vernon, March 15, the Illinois supreme court declared unconstitutional the law limiting the work of women factory employees to eight hours a day, on the ground that it was an unreasonable abridgment of the inherent and inalienable right to make contracts; at Omaha, November 26, the United States district court held unconstitutional the Nebraska maximum freight rate law. The Illinois attorney-general's efforts to enforce the state Anti-Trust Law were rewarded with a decision by a lower court, March 30, that a school-furniture company fell under the prohibitions of the law. Two decisions of the United States circuit court at Charleston, May 8, in respect to state acts of South Carolina, excited great interest. The first made permanent an injunction against proceedings for the election of delegates to a constitutional convention, on the ground that the registration and election laws of the state were invalid under both the state and the federal constitution. The suit in this case was an incident of a faction fight among the Democrats; the majority faction announced its purpose to disfranchise the negroes by a constitutional amendment, and the minority undertook to thwart this purpose. The second decision made permanent an injunction restraining state officers from interfering, under the Dispensary Law, with any liquor brought from other states for consumption and not for sale, on the ground that the provisions of the law in reference to the importation of liquors were an encroachment on the power of Congress over interstate commerce. The cases have been carried to the Supreme Court of the United States.

MUNICIPAL REFORM. — A movement which for two years has been developing in a number of the large cities has during the last months assumed especial prominence. The general aim of the movement has been to secure greater intelligence and efficiency in city government, to direct the activity of the authorities into the field of social rather than purely political interests, and in general to cut off municipal from national and state politics. In New York, Boston, Philadelphia, Chicago and other cities non-partisan organizations for the ends mentioned have kept up a constant and more or less effective agitation. A considerable impetus was given to the movement by the success of the Rev. Dr. Parkhurst in exposing a very corrupt state of affairs in the police department of New York City. The Lexow Investigating Committee, appointed by the legislature, brought to light during the summer and fall a widespread system of bribery and blackmail, and this proved a strong influence in the municipal elections in November. By a combination of citizens irrespective of party the Tammany Democracy, which had controlled the government for some years, was overthrown and a mayor was installed who was devoted to the program of the

reformers. The full realization of their projects, however, was thwarted by the opposition of partisan influence, both Democratic and Republican, in the legislature. In San Francisco, at the November elections, a non-partisan and reform movement resulted in the choice as mayor of Mr Sutro, whose candidacy was in opposition to the corporations that controlled the railways of the city. As to Chicago, where during the autumn a campaign against police corruption in connection with gambling houses had met with success, the reform organization succeeded in March in getting through the legislature a bill establishing the merit system in the civil service of the city, and this project was ratified at the municipal elections April 2.

LYNCH LAW.—A serious affair at New Orleans was the climax of long standing friction between white and negro 'longshoremen on the levee. Owing to trouble with the labor-union of the whites, the cotton-shippers and other interested employers gave all the work to negroes. After many cases of isolated outrage the whites, on March 11 and 12, made an organized attack on the negroes with firearms, in the course of which seven men were killed and many more wounded. The negroes ultimately resumed work under protection of the militia, and apparently earnest efforts were made to punish the offenders. — In Brooks County, Georgia, December 23, a body of white men in pursuit of a negro murderer incidentally killed three other negroes who were supposed to be aiding the fugitive. In this instance, as in several others in Georgia, the lawless proceedings were stopped by the despatch of militia to the scene. — About the usual number of isolated lynchings were reported from the South, and for the usual causes. In at least one case, the victim was already under sentence of death by the regular court. In Louisiana several negroes who were indicted for hanging a murderer of their own race were acquitted in January on the general ground that their privileges in the matter of extra-judicial action were not less than those of the whites. At Memphis, Tennessee, the trial of the perpetrators of the murder of six negroes, as reported in the last RECORD, resulted in an acquittal, December 14, despite a moral certainty of their guilt. At Cincinnati, January 5, an Ohio judge refused to grant a Kentucky demand for extradition of a negro charged with shooting a man, on the ground, first, that the number of lynchings lately in Kentucky created a presumption that the prisoner, if sent back, would die without legal process, and second, that the governor and trial judge in Kentucky had refused to weaken this presumption by a formal assurance, which had been requested, that the prisoner should be protected from mob violence and should receive a fair trial. — Outside of the South the chief events in this field have occurred in Nebraska and Colorado. In Nebraska, January 1, a defaulting county treasurer, who was out on bail after conviction and sentence for his crime, was seized and hanged by a party of masked men. At Walsenburg, Colorado, March 12 and 13, a mob of miners killed six Italians who were accused of murdering an American, two of the victims having been taken from jail.

II. FOREIGN NATIONS.

EUROPEAN INTERNATIONAL RELATIONS. — The respective interests of **France and Great Britain in Africa** were brought into prominence in March by a report that a French expedition had entered the upper Nile valley. In the House of Commons, March 28, Sir Edward Grey, under-secretary for foreign affairs, made a statement declaring that the British and Egyptian spheres of influence covered the whole of the Nile waterway and that the sending of an expedition into that region would be regarded as an unfriendly act on the part of the French government. He admitted, however, that he had no reason to suppose that any such act had been committed. The French minister of foreign affairs, M. Hanotaux, replied to the British declaration in a speech in the Senate in which he demanded that Great Britain should be explicit as to her claims in the Nile valley, and should distinguish between those of herself and those of Egypt. The regions in question, he said, if they belonged legitimately to any one, belonged to the Khedive, subject to the overlordship of the Sultan, and France declined to recognize a vague indefinite claim by England that should prematurely settle the future of enormous territories. Questions as to other regions of Africa were in process of diplomatic adjustment by the two powers, M. Hanotaux said, but as to the Nile matter he had never been able to get any definite presentation of Great Britain's claim. — In view of the proposed transfer of the Congo State to Belgium, a treaty was agreed to February 5 in which Belgium formally recognized France's right of preëmption in case of alienation. — Upon the announcement of the Porte's resolution to send a commission to investigate **the atrocities in Armenia**, Great Britain, Russia and France took steps toward an independent joint investigation. Ultimately, however, the powers concluded to send representatives to accompany the Turkish commissioners, with power to question the witnesses. — **A coalition against Japan** was caused by the terms of peace imposed upon China in the treaty of Shimonoseki (see below, pp. 386-7). Russia objected strenuously to the acquisition by Japan of territory in Manchuria, where Russia has long desired to secure a sea-port. It was announced April 24 that Germany and France had joined Russia in a representation to Japan against several clauses of the treaty. Great Britain declined to join the coalition. On May 6 it was announced that Japan, in deference to the representations of the powers, had abandoned her claim to territory on the mainland, and would find compensation in an increase of the war indemnity.

GREAT BRITAIN AND IRELAND. — Political and social life in the United Kingdom has been quite destitute of striking incidents. Ireland has been almost abnormally quiet. The platform campaign preceding the opening of Parliament failed to arouse the expected popular enthusiasm for the abolition of the House of Lords. Two Conservative victories in by-

elections in November and December seemed to indicate, on the contrary, a serious lack of confidence in Lord Rosebery's proposed program (see last RECORD, p. 775). **Parliament** met February 5. The queen's speech noted the fact that offenses against the law in Ireland had sunk to the lowest level as yet recorded. Proposed legislation included bills for modifying Irish land law and for dealing with the evicted tenants; for Welsh disestablishment; for local veto in the liquor traffic; and for the abolition of plural voting. The government's majority, at the outset only 33, was promptly reduced to 14 by the formal defection of the Parnellite faction of the Irish Nationalists on the ground that no home rule measure had been announced. The slender margin left proved sufficient, however, to carry the ministry through several vigorous attacks by the opposition designed to force either resignation or dissolution. The narrowest majority was on a motion for an amendment to the address dealing with the agricultural depression and the unemployed, February 8, the government prevailing by twelve votes. The government agreed to appoint a commission to investigate the condition of the unemployed. Later on in the session the government's position became somewhat stronger on account of manifestations of friction and lack of harmony between the Conservatives and the Liberal Unionists. None of the government's leading measures has been passed up to the end of this RECORD. The Welsh Disestablishment Bill was introduced by Mr. Asquith, February 25. It provided that in Wales and Monmouthshire the Church of England should cease to be an established church from January 1, 1897; that the jurisdiction of ecclesiastical courts should cease, and the principles of contract and trust should govern in matters respectively of discipline and property; and that the revenues of the church should be vested for administration and settlement in a commission, whose duties were prescribed in great detail. This measure passed its second reading, April 1, by 304 to 260. The Irish Land Bill was introduced by Mr. Morley, March 4. The leading purpose of the measure, he explained, was to insure that the tenant should not be charged rent upon his own improvements. It was further provided that the statutory term for which rents should be fixed by the court should hereafter be ten instead of fifteen years, and that the landlord's right of preemption should be abolished. The evicted tenants were by the bill given the same opportunities to resume relations with the landlords that were given by the act of 1891. The bill passed its second reading without a division, April 5. The Local Veto Bill, read the first time April 8, was designed to give to local divisions the right to determine by popular vote questions as to the prohibition or regulation of the liquor traffic. It provided that a vote for prohibition should require a two-thirds majority and should go into effect after four years and remain unchangeably in force for three; and that limitation of the number of liquor sellers, Sunday-closing and other regulations could be put in force by a mere majority vote. Sir William Harcourt's budget statement was made May 2. It announced a surplus last year of £776,000, and

an estimated deficit for the coming year of £319,000. This latter, due to increased naval expenditures, he declared should be met by an additional tax on beer. — Among the casual matters acted upon by the House of Commons were the following: A motion that the House regards with apprehension the fluctuation and divergence of the values of gold and silver and recognizes the evils arising therefrom — accepted by the government and adopted without a division, February 26; a resolution approving the principle of payment of members of the House of Commons — accepted by the government and adopted, March 22, by 176 to 158. Upon the resignation of Speaker Peel, Mr. William Court Gully was elected his successor, April 10, by a party vote of 285 to 274, the Parnellites voting with the opposition.

THE BRITISH COLONIES AND INDIA. — A cabinet reorganization in Canada was rendered necessary by the sudden death of Premier Thompson, December 12, at Windsor Castle, England, where he had just had an audience with the queen. He was succeeded as premier by the Hon. Mackenzie Bowell. The new cabinet was confronted in March with a very serious political situation arising out of new developments in the long-standing **Manitoba School Question**. From the judgment of the Dominion supreme court noted in this RECORD for June, 1893 (p. 367), an appeal was taken by the Catholics to the privy council at London, and on January 29 a decision was rendered reversing that of the lower court. It was held that the Manitoba School Act of 1890 did prejudicially affect the rights and privileges of the Roman Catholic minority, that because of this an appeal to the Dominion government for remedial action was admissible, and that that government had power to issue the proper remedial commands. The announcement of this decision roused much feeling among Protestants not only in Manitoba but in other parts of the Dominion. It was expected that the government would dissolve Parliament on the issue of their duty in the premises; but after some manifestations of uncertainty and division of opinion, it was determined, March 18, to issue an order requiring Manitoba to restore the separate-school privileges of the Catholics. The order aroused much indignation among the Protestant majority of Manitoba, and the Orange Societies in Ontario and the other provinces gave strong demonstrations of sympathy with this feeling. At the close of this RECORD a compromise adjustment was said to be under discussion. — The social turmoil which seems to have become the normal condition of **Newfoundland** has centered recently in a disastrous financial crisis which manifested itself in a general bank suspension about December 10. Great industrial depression and acute distress among the population existed throughout the winter. Politically, the party whose triumph under the application of the Corrupt Practices Act was noticed in the last RECORD has been overthrown. Elections in November gave to the opposition, the Whitewayites, control of the legislature; the disabilities of the convicted leaders were removed by law, the ministry resigned upon the development of the financial crisis, and, after

six weeks of an interim ministry, on the first of February Sir William Whiteway and his former associates again assumed the reins of government. The grave difficulties of the colony's industrial and financial situation caused serious discussion through the winter as to union with Canada. Though there was much popular opposition to the project, a delegation from the Newfoundland ministry met in conference with representatives of the Dominion government at Ottawa, April 4-17, and negotiations on the bases for confederation were continued after this. By the close of this RECORD, however, the hopelessness of any agreement on the financial arrangements was generally admitted. — The **Australian federation** movement received a new impetus from the action of a conference of Australian premiers at Hobart, Tasmania, February 1. All the colonies were represented and resolutions were adopted declaring that federation was the great question in Australian politics, and that the method of bringing it about should be through a convention to frame a constitution, which, if ratified by popular vote in three or more colonies, should be submitted to the queen with a prayer for the necessary legislation by the British Parliament. A bill embodying the provisions necessary to carry this plan into effect was drafted for submission to each colonial legislature. — The matter of cotton duties in **India** (see this RECORD for June, 1894, p. 367) was settled by action of the Legislative Council in January, whereby the five per cent duty was imposed, but was accompanied by a countervailing excise on all the better grades of goods in which there was possibility of real competition by the Indian mills with those of Manchester. The excise was opposed by the solid vote of the non-official members of the council, and was supported by the officials only on the ground of direct orders from England. A war with the ruler of Chitral, a native kingdom on the northern frontier, was brought to a successful conclusion late in April.

FRANCE — The instability of the French executive has been illustrated not only by the usual change of ministry, but also by another **change in the presidency**. The Dupuy ministry retained its position till the middle of January, though the weakness of the Moderates was indicated by the election of the Radical Brisson as president of the Chamber after the death of M. Burdeau, December 12. On the 13th of January M. Barthou, the minister of public works, resigned, on account of a decision by the council of state that the contracts of the government with certain railways guaranteed their securities until 1956, instead of only till 1914, as the government contended. The Radicals took up the subject the next day and on an interpellation defeated the ministry by 263 to 241. On the following day, January 15, the intention of President Casimir-Périer to resign his office was made public, and on the 16th the resignation was laid before the chambers. The communication indicated, rather than definitely declared, that the reasons for the action were, first, an intense irritation on account of the campaign of personal abuse which the Radical and Socialist press had kept up ever since Casimir-Périer's election, and second, an overwhelm-

ing consciousness of the lack of real power, as compared with the moral responsibility, attaching to the presidential office. It was reported on apparently good authority that the attitude of the Dupuy cabinet toward the president had been such as to emphasize the insignificance of his office in the actual conduct of the government. The election at Versailles on the 17th resulted in the choice of M. Félix Faure, a Moderate, on the second ballot, by 460 votes, to 361 for M. Brisson, the Radical candidate. An incident of the excitement that prevailed during the three days of uncertainty was the issue of a manifesto by the Duc d'Orléans, from Dover, England, calling upon the Royalists to do what was most likely to preserve order, as the republic was only temporary, at the best. In fact most of the Royalists voted for Faure. An attempt to organize a **new ministry** on the concentration principle under M. Bourgeois, the Radical, proved unsuccessful, and recourse was then had to M. Ribot, who announced a ministry of Moderates, January 26. The new premier declared that his work would practically be limited to passing the budget. At the reassembling of the chambers, January 28, President Faure's inaugural message was presented. Its salient features were personal gratitude and confidence in French democracy. — The confusion in the executive rendered the session of the legislature fruitless of important legislation. The Ribot ministry signalized its assumption of power by the passage of a bill giving full amnesty for offenses against internal security, in respect to the press and public meetings, and in connection with elections and with strikes, and further for the misdeeds of priests who had interfered in politics. A notable result of this act was the return to France of M. Henri Rochefort, who had been for some time in exile. — The budget for 1895 was not adopted till April 13, provisional appropriations being made for the first four months. The scheme of tax reform proposed by M. Poincaré, of the Dupuy ministry, involving a progressive succession duty, had to be abandoned, and M. Ribot's final budget established an equilibrium by taking fourteen millions from the accumulations of the *Caisse des Dépôts et Consignations*.

GERMANY. — The Prussian cabinet reorganization which was in progress at the close of the last RECORD was completed during November by the appointment of Baron von Hammerstein as minister of agriculture and Dr. Schönstedt as minister of justice. — The Hohenlohe ministry has made no greater progress than did Caprivi in his later career toward securing a definite support for the government's policy in the **Reichstag**. That body assembled December 5 and took possession of its new building with due ceremony. The speech from the throne announced bills for the better maintenance of public security, for bourse regulation, for an imperial tobacco tax and for a general reform of the system of taxation as between the empire and the states. Only the first of these ("*Umsturzvorlage*") was new, and upon it attention was chiefly centered. The measure provided increased penalties for incitement to crimes of a revolutionary or anarchistic tendency, especially such as might affect military discipline, and made penal

any public attacks through insulting expressions, and in a manner endangering the public peace, on "religion, the monarchy, marriage, the family or property." Opposition to the bill by the Socialists and Radicals was strong from the outset, and the key to the situation was held by the Clericals. This latter party succeeded in the committee in securing important amendments to the bill. Especial hostility on the part of the liberals was aroused by the amendment which penalized attacks on "the belief in God or the dogmas of the church," and by that which repealed the old *Kulturkampf* law forbidding the clergy to endanger the peace by political discussions in the pulpit. The debate on the second reading of the bill in the Reichstag began May 6, and on the 11th, after the principal clauses had been rejected by large majorities, the government abandoned the bill. The government's tobacco tax bill was likewise defeated May 13. Its other projects have reached no definite conclusion. The agitation of the Agrarians for relief to agriculture has been energetically carried on both within and without the Reichstag. The extremists of the party formulated their wishes in the Kanitz Bill, which proposed a government monopoly of the grain-importing business in Prussia, under regulations that would insure the raising of prices. This project was flatly opposed by the government. On the other hand the government's acceptance of the Reichstag's resolution of February 16 in favor of an international conference on the monetary situation was regarded as an effort to placate the bimetallist party among the Agrarians. Another act of concession to the agitation was the summoning of the Prussian state council, which met March 12 under the presidency of the emperor in person. The work of the council, whose sessions were secret, was to consider projects for raising the price of grain, sugar and spirits, for promoting the sale of agricultural products, for developing credit and for settling laborers in the rural districts. A host of propositions that had already been brought forward in the agitation of the Agrarians were laid before the council, but so far as made public the conclusions of that body went no further than an approval of the project of a monetary conference, a recommendation of an increase in the sugar bounty and of reductions in railway grain tariffs, and some resolutions of minor importance. The drastic and almost revolutionary measures urged by the leading Agrarians received no countenance from the council. - **Honor to Bismarck** has been a central point in both governmental policy and popular feeling during the period under review. Chancellor von Hohenlohe made an ostentatious pilgrimage to the old statesman at Friedrichsruh January 13. During the winter preparations were begun for an imposing demonstration in honor of Bismarck's eightieth birthday on April 1, and for two weeks or more about that date all Germany and many foreign lands rendered homage in a great variety of forms to the ex-chancellor. The emperor and his court were most conspicuous in the general enthusiasm, visiting Friedrichsruh with the most elaborate ceremony on March 26. A discordant note was sounded only in the refusal of the

Reichstag, March 23, to send a formal and official congratulation to Bismarck. The proposition was defeated by 163 to 146, Socialists, Radicals, Poles, Guelphs and Clericals making up the majority. Much wrath was aroused by this incident. The emperor expressed to Bismarck his "profound indignation" at the Reichstag's action, and the Conservative president and National-Liberal vice-president of the body testified their anger by resigning their offices. It was at first supposed that the incident would lead to a dissolution of the Reichstag; but the emperor's reported expressions indicating such a purpose were afterwards disavowed. — The Prussian Diet, which opened January 15, was occupied chiefly with financial questions arising out of the standing deficit. Little progress was made toward a definite solution, owing to the connection of the matter with the unsettled questions of imperial finance and with the agricultural depression.

AUSTRIA-HUNGARY. — **Cisleithan** political life has been relatively uneventful. Premier Windischgrätz announced November 27 that, owing to difficulties that had arisen in connection with the government's Electoral Reform Bill, it had been resolved to frame a new and comprehensive measure in coöperation with representatives of the various parties in the Reichsrath. A committee was accordingly constituted which labored through the winter over the new project. The result of the labor has not been officially announced. In the Reichsrath the chief work of the session was a readjustment of taxation, involving the establishment of taxes on profits (*Erwerbsteuer*), corporations, rents and personal income. The municipal elections in Vienna in the latter part of March revealed a great development of anti-Semitism in that city. — In the Transleithan half of the dual monarchy there has been no lack of animated politics. **The ecclesiastical bills in Hungary** whose ultimate passage by the Magnates was noted in the last RECORD did not receive the royal signature till December 10. The long delay occasioned pronounced demonstrations of popular dissatisfaction, which turned to extravagant jubilation when the approval was made known. It shortly afterward was revealed, however, that the acceptance of the bills had involved the fall of the successful Wekerle ministry. On December 27 Dr. Wekerle announced his retirement because he lacked the full confidence of the king. A long crisis was eventually terminated, January 14, by the announcement of a cabinet headed by Baron Banffy, which differed not at all in principles from its predecessor. The important change was the ousting of several individuals whose Radical leanings made them especially objectionable to the court. The Banffy ministry announced that it would press the passage of the two ecclesiastical bills that had been rejected by the Magnates. On March 23, however, the upper house again (see last RECORD, p. 779) mutilated the Freedom of Worship Bill and rejected outright that recognizing the Jewish religion. About May 1 the lower house once more adopted the bills in their original form. The course of the Papal Nuncio Agliardi in denouncing the government's ecclesiastical policy called forth from Premier Banffy, May 1, a sharp rebuke, which in turn was severely

commented upon by Count Kalnoky, imperial minister of foreign affairs. The crisis which resulted from the disagreement of the two ministers ended in the resignation of Count Kalnoky, who was succeeded, May 16, by Count Goluchowsky. — An important incident of the *Kulturkampf* has been the formation of a People's Party (*Volkspartei*), under the lead of the Catholic clergy. The platform of this party combines with the defense of religion a number of other purposes which give it an agrarian and Christian-Socialist character. Its membership is chiefly among the peasantry. — The extreme Radicals have found an opportunity for agitation in the return to Hungary of Francis Kossuth, son of the great revolutionist. Kossuth has accepted citizenship under the monarchy, but in other respects maintains the extreme policy of his father, and thus gives the Independence Party a name to conjure with. He was elected to Parliament in April.

ITALY. The government's preparations for a profitable winter's work in the legislature involved a project for retrenchment in administration expenses to the amount of 43,000,000 lire, and a scheme of radical changes in the land system in Sicily and the southern districts of the mainland, where the agrarian discontent has of late been keen. But the session of Parliament, which opened December 3, was brought to an abrupt termination in less than two weeks through a revival of the Banca Romana scandal. From the outset the attacks of the Socialists and Radicals on the government were particularly violent, on account of Crispi's strong measures earlier in the year (see last RECORD). On the 11th, at the demand of the opposition, ex-Premier Giolitti produced a quantity of hitherto unpublished papers relating to the bank scandal. These documents, on examination by a Parliamentary committee, were found to include a number that seemed to implicate Crispi in compromising relations with the bank and its convicted director, Tanlongo. The prime minister at once denounced the documents as fabrications, and entered suit against Giolitti for libel and forgery. To the king he reported that the prospects of a fruitful session had been entirely destroyed by the development of a carefully planned conspiracy of falsehood and slander against the government, and he recommended prorogation. Accordingly, on the 16th the session was indefinitely prorogued, amid protests by the opposition against what they called a *coup d'état*. On January 21 the session was declared formally ended, and on May 8 the king decreed the dissolution of the chamber and appointed May 26 for new elections. — The treasury reports in February and March showed a very encouraging increase in receipts, so that the estimated deficit of 70,000,000 lire is likely to prove considerably smaller. — On the occasion of his birthday in March King Humbert granted an amnesty for a large number of press and political offenses, and especially for the lesser delinquencies during the disturbances a year ago in Massa Carrara and Sicily.

SPAIN. — The Sagasta cabinet struggled through the winter with some success in the midst of the difficulties with which its financial policy was beset. The outbreak of the insurrection in Cuba increased its embarrass-

ment, and its career was definitely terminated by what seemed at first to be a serious **military disturbance at Madrid** in March. On the 16th of that month a body of officers, incensed at certain articles about the army, wrecked the offices of two newspapers in Madrid. In the excitement that ensued the cabinet could not unite on a policy to be adopted, some of the members justifying the officers and demanding rigorous press laws, and others desiring severe measures against the rioters. On the 17th the ministry resigned and General Martinez de Campos was proclaimed captain-general of Madrid. This officer's measures, backed by the knowledge of his character, quickly restored discipline in the army and order in the city. He declined to assume the functions of prime minister, however, and on the 23d a Conservative ministry was announced under Señor Canovas del Castillo. The differences between the journalists and the officers were settled by a general reconciliation, the former admitting the unwarranted bitterness of the attacks on the army, and the latter abandoning their demand that the writers be tried by court-martial. Having been assured of Sagasta's support in carrying through the budget, the new government devoted itself to the situation in Cuba. A large credit was demanded, and General de Campos was appointed governor-general of the province, whither he set sail with a large force on April 4. — Salvador Franch, the chief conspirator in the bomb-throwing plot at the Barcelona theater in 1893 (see this RECORD for June, 1894) was executed November 21.

RUSSIA. — The marriage of the new Czar, Nicholas II, with the Princess Alix of Hesse-Darmstadt was celebrated November 26. — The attitude and actions of the young ruler in political matters have been very closely scrutinized, with a view to detecting any change of general policy in a liberalizing direction. In the circular of November 9 to Russian ministers at foreign courts it was declared that internal development and external peace would be the principles of the new reign. The retirement of General Gourko from the governorship of Poland in December was hailed by the Poles as a great deliverance, in gratitude for which they celebrated the birthday of the Czar with exuberant enthusiasm. The Czar's letter of thanks to the retiring governor, however, betrayed no dissatisfaction with his policy. Count Shuvaloff, the successor of Gourko, signalized his assumption of office by several liberalizing changes in the Polish system. Rumors of an inclination in the Czar toward representative institutions were set definitely at rest by his declaration, January 29, in addressing a deputation of subjects: "I intend to protect the principle of autocracy as firmly and as unswervingly as did my late and never-to-be-forgotten father." A numerously-signed petition of journalists and literary men for a relaxation of the censorship, which has been particularly rigorous and vexatious of late, was refused by the Czar in the middle of April. — The autocratic method of dealing with the early steps to financial panics was illustrated in January, when the minister of finance published an official notice warning the public against the evils that would flow from the excessive speculation

that was then prevalent on the St. Petersburg bourse. In addition, the leading bankers and brokers were summoned and directed to do what they could to stop the speculative fever, under penalty, in extreme cases, of having their establishments closed. According to the newspapers, this action had the effect of sending down rapidly the prices of the stocks principally concerned. — M. de Giers, the minister of foreign affairs, died January 26. His place was filled in February by the appointment of Prince Lobanoff.

MINOR EUROPEAN STATES. — In **Belgium** the leading questions of the period have been connected with the government's projects for regulating the communal franchise and for taking over the Congo State from the king. The Socialists made a vigorous opposition on both issues, and threatened a general strike if universal suffrage were refused. In April, however, the government's bill for an elaborate scheme of qualified suffrage was passed, with only a few demonstrations by the Socialists in the mining regions where strikes are perennial. **A ministerial crisis in Norway** was precipitated by the final outcome of the elections in November, which left the Radicals still in control of the Storting, though by a reduced majority. Legislative business was practically at a standstill throughout the period under review, since the king refused to dismiss the Conservative ministry. In February a compromise seemed likely as a result of a long conference between the king and the Radical leaders, but the scheme fell through on account of anti-Swedish demonstrations in the Storting. At the beginning of April the king announced his final resolution not to form a Radical ministry, since the constitution did not oblige him to choose his advisers from the majority of the Storting, and since such a choice at the present time would endanger the union with Sweden. The situation in May was regarded as very serious, and as threatening revolution. — On November 12 reports began to be received in western Europe of a great **massacre of Armenian Christians** by Turkish troops in the preceding summer. The matter soon became and has since remained the subject of general discussion in the press and in diplomatic circles. From the most trustworthy accounts the facts seem to be that the standing tension between Armenians and Kurds in the Sassun district, near the city of Mush, led to disturbances in which the Armenians were brought into an attitude of hostility to the Turkish local authorities. On the representations of the latter a considerable force of regular troops was concentrated by the Porte in the region, and the population of the disturbed region was practically exterminated, with circumstances of barbarity that recall the Bulgarian atrocities twenty years earlier. There seems to have been some ground for the Porte's contention that revolutionary agitators had been at work in the region, but it does not appear that they were responsible for the original disturbances. In December, as a result of the indignation expressed throughout Europe, the Porte appointed a commission of high officials to go to the scene of the trouble and investigate the whole matter

The investigation began about February 1, but no report had been made public at the close of this RECORD. — In **Servia** a judicial justification for the *coup d'état* of the preceding May (see last RECORD) was supposed to have been found in the trial of a number of Radicals on a charge of plotting to overthrow the king and put Prince Karageorgewitch on the throne. Six of the accused were convicted and sentenced to imprisonment. Experts in Servian politics suggested that the whole proceeding was merely designed to promote the government's success in the elections for the Skupschtina in April. At these elections the Radicals refrained from voting, on the ground of excessive governmental interference, and accordingly a huge ministerial majority was returned. The Assembly met April 22 and ratified the acts of the king in the last *coup d'état*. — Despite the official intimation that the new Czar would maintain the same attitude as his father toward **Bulgaria**, the Russophil tendencies of the Stoïloff ministry have remained conspicuous. At the beginning of January a general amnesty for political offences was enacted, in consequence of which M. Zankoff, the famous Russophil agitator, returned from exile and was received in audience by Prince Ferdinand. The animosity of the government against ex-Premier Stamboloff has been manifested in the charge that he was implicated in the murder of M. Beltscheff in 1891 (see this RECORD for June, 1891, p. 399). An order for his arrest in January aroused so much indignation both at home and abroad that it was not executed. — A new cabinet in **Greece**, headed by Nicholas Delyannis, assumed office after the resignation of Tricoupis, January 22. The occasion for the change was a difference of opinion between the government and the crown prince, who commanded the military in Athens, as to the course to be pursued in dealing with popular meetings to denounce the government's tax schemes. It is alleged that the real cause of M. Tricoupis's withdrawal was his despair of settling the financial questions with the existing legislature. An appeal to the electorate followed the crisis and resulted in the defeat of the Tricoupis party.

AFRICA. — In November an arrangement went into effect by which the police administration in **Egypt** was brought more under British influence and control. The whole police organization of the country was centered in the ministry of the interior, which was equipped with English advisers to guide its action. In February, at the instance of Lord Cromer, a special tribunal was created, with summary powers, to deal with offenses against members of the British army of occupation. The budget for 1895 showed an estimated surplus of nearly £700,000. — In Abyssinia the Italian forces have continued their progress inland from the coast, and by a series of victories over Ras Mangascia have established themselves in the chief towns of Tigre, the northernmost province of Abyssinia. — **War between France and Madagascar** resulted from the failure of the special mission of M. le Myre de Villiers (see last RECORD). The Hova government in October refused a satisfactory answer to the formal demands (1) that no relations with

foreign governments and their agents should be maintained except through the French resident general; (2) that no concession should be granted to any foreigner save with the resident's approval; (3) that the French should have the right to maintain in Madagascar a force sufficient to insure the safety of foreigners; and (4) that the French should be permitted to construct roads, railways, telegraphs, *etc.*, and to receive the revenue from them when the Hova government should fail to assume the expense of the works. Upon the failure of this ultimatum all the French residents left the capital, and preparations began in France for a military expedition. A war credit of 65,000,000 francs was voted November 26, but it was not till April that the main part of the expedition, under General Duchesne, set sail from Marseilles. Preliminary French victories on the coast were reported early in May.

CHINA AND JAPAN. — A continuation of Japan's military and naval successes during the winter brought the war between these powers to a triumphant end in April. The advance of the Japanese armies into Manchuria along the coast resulted, November 21-22, in the capture of China's most important naval station, Port Arthur, with vast military stores. The further land operations in this region were greatly retarded by the severity of the winter weather and by the somewhat increased energy of the Chinese. On March 5, however, the Japanese finally carried the important town of Newchwang, which had for some time been their objective. Meanwhile their fleet and a second army had moved against Wei-Hai-Wei, a strongly fortified port at the opposite (southern) entrance to the gulf of Pechili, and after severe fighting this place was captured, February 17, with all of the Chinese navy that escaped destruction. Long before this the efforts of the government of the United States, through its ministers in Peking and Tokio, had been successful in opening the way to peace negotiations. In December the Chinese government decided to send plenipotentiaries to Japan, and asked ex-Secretary of State J. W. Foster to accompany them as adviser. The plenipotentiaries met the Japanese ministers at Hiroshima February 1, but on the following day were dismissed because the powers given in their credentials were unsatisfactory. After six weeks more of preliminary discussion through the American ministers, two commissioners with full powers were despatched to meet the Japanese ministers at Shimonoseki. On March 24, at the end of the third conference of the negotiators, Li Hung Chang, the chief Chinese representative, was seriously wounded by a pistol shot fired by a fanatical Japanese in the street. The regret of the Japanese Emperor for so serious an offense against international right was practically manifested in a much more concessive spirit, and the negotiations were greatly expedited. An armistice was agreed to, and on April 17 a treaty of peace was signed. The terms included the recognition of Korean independence; the cession to Japan of Formosa and some smaller islands, and the peninsula of Liao-Tung, including Port Arthur; a large war indemnity; and a very great relaxation of the restrictions on foreign industry and com-

merce in China. After the modification of the territorial clauses, in deference to the European powers (see above, p. 375), ratifications were exchanged at Cheefoo, May 8. — Parliamentary proceedings in Japan have continued to be perfectly harmonious, under the influence of the national war spirit. The great military appropriations have been voted unanimously.

HAWAII. — An armed uprising of royalists, headed by former officers of the deposed queen, took place January 6. The government promptly adopted radical measures for its suppression, and after three days of desultory fighting near Honolulu all the active insurgents were either killed or captured. After the termination of hostilities the government made numerous arrests of royalist sympathizers, and on the 16th the ex-Queen Liliuokalani was taken into custody. On the 24th the latter formally renounced all her claims to the throne and swore allegiance to the republic. She was brought to trial, however, with a large number of her former adherents, on various charges connected with the uprising. The trials were by a military commission, and resulted in a large number of convictions. The ex-queen was found guilty of misprision of treason and was sentenced to five years' imprisonment. Extreme sentences imposed upon the active leaders in the uprising were mitigated by President Dole so that no execution occurred, imprisonment or banishment being substituted. By March 1 all the cases had been disposed of and normal conditions were fully restored.

LATIN AMERICA. — Several instances of friction with European powers have assumed prominence during the period under review. Venezuela's long-standing controversy with Great Britain over the boundary in the Orinoco region has attracted some attention on account of the resolution of the Congress of the United States endorsing President Cleveland's recommendation that the matter be submitted to arbitration. Venezuela has had trouble with other European countries in connection with claims for damages arising out of the civil disturbances. The German and Spanish ministers withdrew from Caracas during the winter, and in March the ministers of France and Belgium were peremptorily dismissed, on account of the publication of a paper which had been formulated, but never presented, reflecting severely upon the Venezuelan administration and demanding the establishment of mixed tribunals to pass upon foreigners' claims. Through the good offices of Italy progress toward a settlement of the difficulties was made in April. In March Spain brought about a settlement of the French claims against San Domingo which had caused a diplomatic rupture of two years' standing. — The action of Nicaragua in summarily expelling British subjects from the country in connection with the troubles on the Mosquito coast in the summer of 1894 (see last RECORD, p. 784) led to a peremptory demand by the British government, February 26, for £15,500 damages. Nicaragua's request for arbitration was ignored until this specific amount should be paid, as satisfaction for the treatment of a Mr. Hatch, who was held to have had an official character as British consul. As Nicaragua failed to comply with the demand, a British naval

force, upon three days' notice, occupied the port of Corinto, on the Pacific, April 27, and proceeded to take the customs dues in order to satisfy the claim. No resistance was offered by the Nicaraguan authorities. On May 3 an agreement was reached by which Nicaragua undertook, under a guarantee of the government of Salvador, to pay the money within a fortnight, and accordingly two days later the British forces withdrew.—A boundary dispute between Mexico and Guatemala, which assumed a warlike aspect during the winter, was adjusted April 1 by treaty.—**Revolutionary uprisings** have occurred in Colombia, Peru and Cuba. That in the first-named state was declared suppressed in March. In Peru an unsettled political situation following the death of President Bermudez, in the spring of 1894, resulted in a formidable uprising in the winter against his successor, Caceres. On March 17 the insurgents, of whom Pierola was the chief leader, carried Lima by storm, put the government to flight and installed a provisional organization. In the last week of February a concerted movement by Cuban agitators in the United States and San Domingo resulted in the landing of a number of bands in Cuba, where a revolution was proclaimed. Desultory fighting has been going on ever since, and in May the rebels manifested themselves in considerable force. Martial law has been proclaimed by the government and large forces of troops have been concentrated in the threatened regions, mostly in the eastern end of the island. General Martinez Campos, having been appointed governor-general, reached Cuba in the middle of April.—The new president of Brazil, Prudente Moraes, took office quietly November 15. His policy was soon shown to be one of peace and reconciliation among the factions of the land, and it has thus far proved successful. An amnesty for political offenders was proclaimed early in his term, and considerable progress was made later in pacifying the disturbed state of Rio Grande do Sul.—In the Argentine Republic President Saenz Peña came into serious conflict with the Congress in January by refusing the latter's request for an amnesty for participants in the last insurrection. On January 22, after his cabinet had abandoned him and he had failed to find another, the president resigned his office. His resignation was accepted with but one dissenting vote, and Vice-President Uriburu assumed the vacant post.

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POLITICAL SCIENCE QUARTERLY.

THE GOLD STANDARD OF CURRENCY IN THE LIGHT OF RECENT THEORY.

WHAT kind of currency this country is to have is, in the main, to be decided by the people. Among the influences that are shaping the popular verdict on this point there are two delusions and a number of imperfect theories. One delusion concerns the relation of money to the rate of interest. Many persons still think that low interest is to be secured by inflating the currency, instead of by slowly accumulating real capital. This is a point on which theory is already clear and convincing. A dissemination of truth would be useful, but new discoveries are not necessary. Such is not the case, however, in respect to the imperfect theories above referred to. Here science is not ripe for mere dissemination. Thinkers disagree on certain points ; and one of these is the question : To what standard of value ought currency to conform, in order to do exact justice to debtor and creditor ? The science of value ought at least to tell us how justice in this relation is to be done.

Injustice can come in one of two ways : the contract of payment may be violated, or into the making of the contract itself there may enter some element of unfairness. A man may not do what he has promised to do, or he may in some way have been induced to make a promise the keeping of which would injure him. It is conceivable that he may have made an injurious promise because he is personally ignorant, and his creditor may have taken an advantage of him. On the other

hand, events may have occurred since the contract was made that were not foreseen by either party in the transaction, and these may have the effect of making the fulfillment of the contract unexpectedly difficult. The price of wheat, in terms of gold, may be low ; and it may be hard for a wheat-grower to fulfill a gold-paying contract.

This is not saying that it is unjust to make him fulfill it. It begs a far-reaching question to assert that a debtor ought not to be made to meet unforeseen hardships. The easy identification of hardship imposed on debtors by events with wrong inflicted on them by creditors, is one of the features of the present situation. If under such circumstances the collection of debt means a wrong, it is the law that is held responsible for it ; and an effort to change the legal terms of payment will be made. As the law now only exacts the literal fulfillment of a promise, a change in the terms of the law can relieve the debtor only by excusing him from such a fulfillment. The plan would be to introduce the literal wrong of allowing promises to be violated, in order to remedy a supposed virtual wrong involved in enforcing the contract under changed conditions. If gold has become dear, substitute a lighter dollar than the one referred to in the contract, or a dollar made of a different metal ! One can see in a moment how this would work.

To make the legal dollar heavier or lighter than that which the debtor has received and has promised to pay, or to coin it from a different metal, is to violate both the letter and the spirit of a myriad of contracts. If it corrects the unequal — we do not say unjust — action of some contracts of long standing, it introduces clear injustice into the fulfillment of many times more numerous contracts which are of recent date. Morally as well as otherwise it is a costly way to correct the dealings of evolutionary fate or of Providence. Monetary contracts in force to-day were largely made yesterday. The overwhelming majority of them were made within the year just completed. Some, such as are embodied in bonds of governments and of corporations and in mortgage notes, date from remoter periods in the past. Let it be supposed that within ten years the

purchasing power of the gold dollar has gained ten per cent in terms of agricultural labor, shall we take a tenth from the weight of the coin, in order to correct existing contracts and make them conform to a fair standard? If the appreciation of gold has been uniform through the ten years, it requires only a little arithmetic to show that on all the vast majority of contracts still pending, — those, namely, that have been made within the latter half of the period, — we shall create more inequality than we remedy. In the case of all that have been made within a year we directly rob one party to the contract, and give the proceeds to the other. The contracts made in the immediate past have been made in terms of a dollar of a known labor value, and one that, on every ground, ought to be paid in terms of the same unit. The wrong and the practical harm that have resulted from changing the metallic weight or quality of the coins that are the bases of contracts are too apparent to need argument.

The second possibility of evil which we noticed comes from a matching of ignorance against knowledge in the making of contracts for future payments. The coin which the debtor receives and agrees to repay may be foreordained to increase in purchasing power. One party, say the creditor, may know this, and the debtor may not. Ignorantly the debtor may take upon himself the obligation to pay the equivalent of more units of labor than he gets when the loan is made. Beyond simple interest he ignorantly promises to pay a bonus on his loan. If he pays a nominal rate of five per cent in interest, he may pay a real rate of six. At the expiration of the time covered by the loan he will have to pay, in effect, more labor than he received. For money wherewith to satisfy his creditor he must work more than the creditor worked, or caused other men to work, in order to get the money with which the loan was made. He may have to pay, in short, more of real wealth than he received.

Now it is clear that, if such a result is foreseen, it can be corrected by varying the nominal rate of interest. Under the assumed conditions, the loan of real capital should be

repaid, at the end of ten years, by an equal amount of real capital and fifty per cent more in the way of total interest. This would afford a real interest of five per cent per annum. If money gains in purchasing power at the rate of one per cent per annum, or ten per cent in ten years, then nearly one per cent can be deducted from the nominal rate of interest promised in the note without reducing the true rate of interest on the loan of true capital below five per cent. By repaying at the end of the time the original sum of money loaned, and by paying at intervals through the period a sum aggregating forty per cent in the way of interest, the debtor really pays fifty per cent, because the principal of the loan, at the time of repayment, represents ten per cent more in real wealth than it did when the loan was contracted. Would an ignorant debtor be able to take advantage of this fact? Would he reduce the nominal interest that he agrees to pay, so as to make the real interest correspond with the earnings of capital?

If the transactions between a debtor and a creditor were made in isolation, and without influence from a general loan market, the one who best foresaw the future might be able to take advantage of the other. This, however, is a nearly impossible case. In a single transaction with one borrower, a lender of capital must usually content himself with about the rate that he could get for it in the general market; and the borrower, however ignorant of the future he may be, is only obliged to know about how much he would have to pay in the same general market. The prevalent rate of interest on loans dominates individual transactions. In the general market it is impossible that knowledge of the future should be very unevenly distributed. Lenders, as a body, know as much as borrowers, and not more. If the rate secured on loans of money corresponds to the earning capacity of real capital, as by any clear theory it should do, then the variations in the purchasing power of money are unerringly corrected through the nominal rate of interest.

That such a correction is actually made when changes in the purchasing power of money are generally foreseen, admits

of little doubt. In the course of one of the ablest speeches recently made in the Senate in behalf of the free coinage of silver, the speaker was asked how he knew that gold had appreciated in value. He replied, that he wanted no better proof than the low rate of interest prevailing. "Men do not," said he, "agree to pay a large percentage when the money in which the repayment of the principal must be made is becoming more and more costly." It was a naïve confession that a debtor does not suffer nor a creditor gain by a change in the purchasing power of coin, provided that the change is generally anticipated. There may be aberrations in the working of this law, as there are in the case of other laws of economics; that on a large scale it does work is not doubtful.

Unforeseen changes remain to be provided for. If gold be the basis of currency, the mining of it may be quickened or retarded in ways that the market cannot anticipate, and therefore cannot discount. The volume of business and the demand for money may change. It follows that any metallic currency may deviate somewhat from a perfectly ideal currency. Unforeseen variations do not introduce any element of fraud into the making and paying of debts. They introduce a residuum of uncertainty into contracts that cover long intervals of time. One party is liable to gain somewhat at the cost of the other. Suggestions have been made for the removal of this residue of inequality. A multiple standard has been proposed whereby the unit of payment should consist in a variable amount of metal, with a fixed amount of "commodity." As much gold as may be worth a pound of tea, a pound of wool, a bushel of wheat, *etc.*, would be the unit of loans and payments. It is worth while to determine whether this is the right theoretical standard of payments, though not mainly for the sake of ever using it in practice. The chief thing to be gained is a knowledge of what is the true standard, and a power of determining how far any metallic standard deviates from it.

We have to remember that the only real motive for using any multiple standard is to correct inequalities that are not now corrected by means of the nominal rate of interest. These

are only such inequalities as are not foreseen by the business world. A slow, steady and calculable advance or decline in the commodity value of metallic money would do no serious harm. A rapid, irregular or incalculable variation in the purchasing power of it would do harm. We can form an idea of the extent of this liability to evil by a study of the true theoretical standard of deferred payments. What is that standard? This point may seem to lie in the region of pure theory. In reality it is the point of largest practical consequence. If we can settle the question involved, we shall be in a position to know whether a currency based on gold is or is not the best that we can practically get.

There is an ideal standard to which it is best that the value of money, metallic or other, should conform. The social change that affects in a most important way the payment of debts is the transition from a time of prosperity to one of depression. Incur a debt when industry is very productive, and pay it when industry produces only a little, and you suffer a hardship. The creditor has loaned something that he procured with comparative ease ; and you pay what you get with difficulty. There are cyclical changes in business that bring this alteration, on the average, about once in a decade. With some irregularities and secondary movements, the crisis, following the "boom" that is the cause of it, comes about once in ten years. It is of the greatest importance to note, what a full study of these movements would reveal, that the prosperity of the one period and the adversity of the other are not due respectively to healthy and to unhealthy social conditions. It is the boom that deranges society ; and the chief phenomena of the following crisis constitute a remedial operation. The productive forces are misadjusted during the boom, and are readjusted, in a painful way, during the period of depression.

The *sensation* of social derangement comes when the forces of industry are recovering their normal position and action. The nature of each process can be fairly well analyzed. There ought to be little doubt as to what it is in the over-stimulated industry that constitutes a derangement of the organs of social

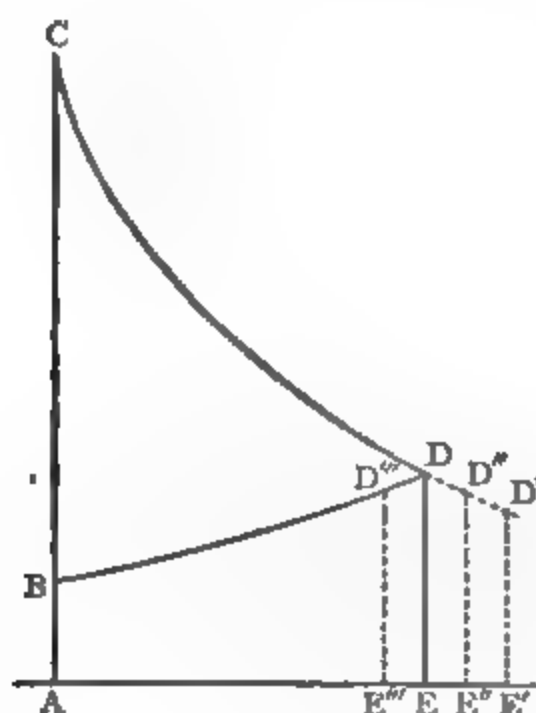
production, and what it is in the suffering time that follows that really restores health, or a natural adjustment of social organs and functions. It ought to be possible to look at the practical world with enough of scientific discernment to see the element of disease in the feverish activity of the boom, and the element of recuperation amid the waste and suffering of the panic. By the signs of the times the coming of either period ought to be measurably anticipated, and in monetary transactions it ought to be in a certain degree discounted. The periodicity of panics is a help. While quite accurate forecasts are not to be expected, it would be an undiscerning view which should not give to the business world the credit of anticipating this cyclical movement to a certain extent, and of taking some account of it in those general transactions by which the rate of interest is gauged.

This cyclical movement of business is of much importance in connection with what is termed the "elasticity" of a circulating medium ; but it is of minor consequence in connection with the question of the ideal standard of value, to which the coin that is the basis of a currency ought to conform. It is the secular change in social prosperity that is here important. Measure the productive power of the world at intervals fifty years apart, and you discover each time an appreciable advance. There is a chance that even this change may, in a considerable degree, be anticipated and discounted in monetary transactions. Yet an ideal currency would be one that will work fairly, as between debtor and creditor, in case the gain in productive power is not taken into full account in adjusting the rate of interest.

There is no question of fraud here to be raised. A debtor may gain and a creditor may lose, and *vice versa*, by the terms of a perfectly just contract ; and it would be a pernicious principle that should seek to remove such an inequality by tampering with the currency, and so impairing the validity of the contract. It is, however, precisely because a popular impulse to resort to this perilous expedient again and again appears, that it is in a high degree desirable to have such a currency

that secular changes may affect debtor and creditor alike. If the world becomes more prosperous while the loan is running, let them share alike in the gain. When debt-scaling movements lose their theoretical backing, they become impotent. The argument that proves to a debtor's satisfaction that the literal payment of his debt will virtually rob him, is what raises the defaulting policy to a moral level at which it can win votes.

At this test point theory ought to be clear. When a man makes over money to another, he does for him a service that has a positive and a negative side. First, he enables the receiver of the money to get commodities; secondly, he enables him to avoid labor. The receiver of the money may take the benefit in either form. If he gets a hundred dollars, and if wages are a dollar a day, he may work as much as he formerly did, and have a hundred dollars' worth of extra commodities for consumption. In this case, he takes the benefit in a positive form. If, however, he prefers to content himself with the amount of goods that he formerly consumed, he can take a hundred holidays or two hundred half-holidays. In any case, the benefit that he gets resolves itself into a release from a certain amount of work. It is a real gain, computed in a negative way. In practice, he will take the benefit partly in one way and partly in the other.



Resorting to a graphic expression, we may let the hours of labor in a day be measured on the line A E. There are ten hours in a working day, and a man gets a dime for each of them. The sacrifice involved in the different hours is not uniform. Fatigue increases toward the close of the day, and confinement is then more severely felt. We will measure the sacrifice incurred in different parts of the day by vertical distance from the line A E. At the beginning of the day it is A B, and at the end it is E D. Through the day the sacrifice involved in labor ascends along the curve B D.

Now the personal gains that come from spending the dimes as they are earned, diminish as there are more and more of them to be spent. With the first dime the man buys food worth to him the amount expressed by A C. With the next dime he buys what is by one point less important; and with the last he buys what in his scale figures as a luxury. It is something that to him has an importance expressed by E D. This last purchase barely pays for the personal cost of securing it. This same line, E D, measures the sacrifice entailed by earning the money by means of which the final commodity was bought. It is a coincident measure of final gain and final sacrifice.

If industry were to become more productive, and if labor were to share in the prosperity in full measure, what would the man do? Would he still work through ten hours, and pocket his increased earnings? That would be a bad policy. With the earnings of ten hours of labor he can get more commodities than before, but they must have a reduced utility. The last thing bought is now worth E' D', while the money that buys it cost E D. In order that the final sacrifice entailed by a day's labor may not more than offset the gain secured by means of it, the day must be somewhat shortened. If an hour be taken from the length of the day, the final cost of the labor will be E''' D'''. The final utility of goods secured will be E'' D''; and these two lines are equal. The final sacrifice equals the final gain.

Theoretical as this statement may seem, it expresses one of the most dominant facts in industrial life. There is no risk in

asserting that the principle thus stated works in practice. As the earnings of labor increase in terms of commodities, the duration of the working day is shortened. It tends to conform in length to the rule of equal final gain and final sacrifice.

What relation has this fact to the question of currency? A decisive one. If a unit of currency conforms to the amount of commodity secured by a *day* of labor, it will be an ideally right one; for it will divide equally between debtor and creditor the gains that come through industrial progress. Such an ideal dollar, if we use the American unit as the test, would buy a continually increasing amount of general commodities, and it would buy a decreasing number of *hours* of labor. If the number of hours of labor put into each day were quite normal, the ideal unit of currency would, as already stated, command an unvarying fraction of an average day of labor. If a thousand dollars loaned in 1800 cost a thousand days of labor, the same amount, as repaid in 1850, would cost the same number. Labor that diminishes in actual amount, as measured in hours, and that diminishes in sacrifice entailed, — this affords a standard of payment by which debtor and creditor may share alike in the benefits of progress.

It will be labor that increases in power to produce goods. If the creditor, in making the loan, gave to the debtor the power to get a hundred commodities, representing a hundred hours of labor; and if the debtor at the end of fifty years pays to his creditor money that will buy a hundred and ten similar commodities, but was earned by ninety hours of labor: the gains from progress are shared in a way that is practically even. The arithmetic of the case is simple; but let us make sure of it. The debtor has paid more commodities than he received. An excess of positive benefit has come to the creditor. The debtor has worked for the creditor less than, at the time when the loan was made, the creditor, or some one controlled by him, worked for the debtor. An equivalent gain, as negatively computed, thus comes to the debtor. Moreover, it is possible for either party to transmute a negative gain into a positive one, and *vice versa*. The debtor may, if he will, work a hundred

hours instead of ninety. In that case he will be able to pay his debt and keep for his own use the commodities produced in the extra period of ten hours. Again the creditor, on receiving the hundred and ten units of commodity, may consume only as many as it was his former custom to consume. Having ten extra units in his hands, he may elect to work for about eighty hours in a given period instead of ninety. His positive gain will then have been translated into a relief from work.

What will be done in fact by both parties is to take the gain partly in one form and partly in the other. If there were ten hours in a working day when this loan was made, and nine when it was paid, then the work of ten days performed by the creditor for the debtor should be paid by the work of ten days performed by the debtor for the creditor. In general, the ideal unit of deferred payments is one that, as the productive power of labor increases, represents more and more commodities and fewer and fewer hours of labor. If the duration of a working day be reduced in a natural way, this unit represents a constant nominal amount of labor, as estimated by the day.

Now if a government were to resort to the same process that is involved in the theoretical multiple standard, — the process, namely, of varying at short intervals the bullion weight of the unit of currency, — any metal or other material might in some sort be made to serve the purpose of debt-paying. The debtor promises to pay a fixed number of dollars consisting of some specified material. It might be gold, silver, copper, tobacco or wampum; if the amount that by law should constitute a dollar were at all times made to be that amount which, in the actual market, would buy a day of labor of average quality, the contract would be enforced, and the parties would be secured against unequal treatment by social destiny. Yet it is clear that a metal that should require little of such correcting would be better than one which should require much of it; and if, by happy chance, any one metal conformed approximately in its bullion value to the value of the changing labor day, it would be out of the question to think of instituting the system of varying the weight of bullion used as the unit of payment.

Has gold, for the last fifty years, had in the world at large a fairly uniform power to buy average days of labor? Has the average day of labor grown shorter? Has it come to command more commodities than it earned at the beginning of the half-century? If statistics answer these questions affirmatively, they establish the claims of gold as a standard of currency during a period of very great disturbance. If lesser disturbances are to be expected hereafter, the claims of this metal are to that extent greater. It would furnish a poor standard if an ounce of it could purchase to-day no more commodities than it could have bought fifty years ago. It would be a defective standard if an ounce of it to-day paid for as many hours of labor as it paid for in 1845. It is the best standard that practically can be had if an ounce of it commands, with minor variations, about as many average days of labor as it did at the beginning of the period.¹

X The standard that we have attained is, then, an ideal one, in the sense that it most effectually precludes inequality of treatment of debtor and creditor when contracts are literally enforced. A labor day of enlarged power to produce, and of diminished power to inflict sacrifice, constitutes this standard. If the metallic unit of money were kept in constant agreement with this standard, the necessity for forecasting the future condition of business and adjusting the interest on loans to that future condition, would in a large degree be removed. If we used as money treasury notes calling for "dollars"; if we re-

¹ In a brief statement like this, practical variations from theoretical law must as a rule be left unstudied. One, however, must at least be noticed. In the course of fifty years a change in social psychology may take place, partly in consequence of industrial gains. This may lead men to prefer gains that come in the positive form, rather than those that consist in a relief from labor. There may be an increased ardor for accumulation, and men may prefer to work long and acquire capital, rather than to shorten their labors as much as the principle above cited would require. Moreover, their consumption may become more and more varied, and the effects discussed by Professor Patten in his *Theory of Dynamic Economics* may ensue. This tends to make men prefer to take gains from industrial progress rather in the form of increasing goods than in that of diminishing labor. In so far as this disturbing influence modifies the law before stated it causes the ideal standard of deferred payments to represent slightly less than the labor day practically adopted.

deemed these notes on presentation in gold; and if we made the amount of gold paid for them so to change from time to time that on any particular day it would actually secure a fixed fraction of an average day's labor, — there would be no need of varying the rates of interest so as to counteract the effect of changes in the purchasing power of money. The need of such forecasts and such adjustments of rates of interest arises only because the dollar is of a fixed weight and may vary from the ideal standard.

The dollar of variable weight suggested in the above illustration *would conform to that standard of value from which the variations of value of a dollar of fixed weight ought to be calculated.* In the main it is the standard from which, as I think, the variations actually are calculated, not so much when the value of money is discussed as when interest is computed. Unconsciously and in computations in which personal gains are at stake, we use the right standard for computing the variations in the purchasing power of money. These variations, which call for forecasts wherever rates of interest are to be fixed for long periods of time, are capable of being largely neutralized by such forecasts. The evil that can come from the fact that a gold dollar has a fixed weight is reduced to very small dimensions. Within any but a very long period it conforms closely to the ideal standard. The variations that occur in such a long period are largely counteracted through adjustments of the rate of interest. An uncorrected remainder of a small variation remains.

Opinions will vary as to the degree in which the length of the actual working day differs from that of the theoretical day, which, if the foregoing deductions are correct, furnishes an ideal standard for money. Views will vary as to the extent to which the gold dollar has lost in its power to purchase hours of labor. If we think that ideally it ought to lose in its power to buy hours of labor as much as it gains in its power to buy commodities, we shall unite in thinking that its actual behavior has varied comparatively little from the ideal requirements. In any case it has gained where it should have gained, — in

its power to buy commodities measured in kind; and it has lost where it should have lost, — in its power to buy average labor, measured by the hour. How nearly in quantity the loss offsets the gain, is an unsettled question.

There is an influence at work that, in the immediate future, may throw into the background the question of the true bullion weight of metallic money. It is the question of the volume of general currency. Here a second delusion has an unhappy effect. It is more widespread than the former delusion, which concerns the relation of the volume of currency to the rate of interest. This concerns the relation of the volume of currency to permanent prosperity. An easy acceptance is given to the thesis that rising prices always mean prosperity. They do indeed attend that movement of recovery that follows a business crisis. The crash wrecks prices in many directions, and the resumption of business restores them. The boom that follows the natural restoration and that precedes the next crisis raises prices abnormally. On the whole, the western world is committed to the "booming" policy, or to that course which exaggerates both the feverish activity that simulates prosperity but really means disease, and the collapse that opens the way to health.

If a currency is to vary from the ideal one in volume, as well as in the bullion value of the coin on which it is based, in which direction should the variation be? Is it better to use the currency as a means of slightly raising prices, or is it preferable slightly to depress them? Is not the answer furnished by determining whether the oscillating movement of business is a good or an evil? Changes in the volume of currency may increase or diminish these oscillations. There is much to be said in favor of "elasticity" in currency, provided that it stretches in times of panic and contracts at the time when society is preparing the way for the panic by speculative activities. Shall the pulse be quickened at the critical moment when the fever is beginning? When commodities of all sorts are bought, not to be used by consumers, but to be held and sold for a profit, then the actual derangement of the social

organism occurs. The currency that inflates at that point renders inevitable the panic, in which even a good currency betakes itself to holes in the earth. Such a rhythmical inflation of currency is the worst of all inflations.

The steady enlargement of metallic money is less perilous ; but, in the long run, we shall and must learn to value steadiness of commercial movement above all other things that can be attained by means of currency. It will be at the beginning of the boom that we shall learn to deal with the panic. Even the steady enlargement of the currency, if it be out of proportion to the increasing volume of business, favors speculation and the wasteful alternations of business conditions to which the world is unhappily accustomed. One might shrink from contracting the currency in order to prevent commercial fevers ; but if nature slightly contracts it, she will do us a kindness that is not even veiled. It is well that the variations of the value of money from the ideal standard should be as small as is possible. It is well that such variations as occur should not make hard times harder, by aggravating the disease that lurks under apparent prosperity.

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THE IDEAL OF THE AMERICAN COMMON- WEALTH.¹

IT is now many years since I have attempted to produce an essay upon an assigned subject. There are some advantages, however, in accepting such a task. One of them is that the recluse who has been moving for a long period within the limits of his own narrow circle of thought, is made to see what the world without regards as important. Left to myself, I should hardly have chosen so ambitious a subject as "The Ideal of the American Commonwealth." Left to myself, I should have selected a much narrower subject, to be treated with much more detail. Above all things I should not have ventured into the realm of prophecy. Relieved as I am, by the assignment of my subject, from the exercise of any discretion in regard to these things, I am in consequence also relieved from any responsibility for the inevitable result of being compelled to treat such a subject with the required brevity and conciseness. One thing, however, I have American enthusiasm enough to say at the outset : if I succeed in presenting the "Ideal of the American Commonwealth," I believe I shall have presented the ideal commonwealth for the world.

On the threshold of my treatment I must meet the question as to what is intended, on the part of those who have assigned me this subject, by the phrase : "The Ideal of the American Commonwealth." Do they mean the ideal as it lies in my own mind — the ideal of my individual speculation, my own thought or, perhaps, dream as to what that commonwealth ought to be ? Or do they mean the goal toward which our American commonwealth, the commonwealth of these United States, is making its historic progress ?

¹ This essay was prepared for, and read in, the Political Science section of the Auxiliary Congress of the Columbian Exposition. The subject was chosen and assigned by the committee in charge of the section.

Happily I am not compelled to choose between the two alternatives ; or, if I am, it matters not which I choose ; for I can conceive no higher political ideal than that which I believe our American commonwealth is evidently destined to realize. This is optimistic, I know ; but the longer I read and ponder the history of our country the more clearly I see that every great movement in that history has been a distinct step in advance towards a great ideal. My old friend and teacher, the great Prussian historian Professor Droysen, once said to me :

The thing that impresses me as most significant in the history of your country is that you solve your problems just at the right moment ; you strike exactly when the blow will be most effective ; and you show a distinct advance towards the ideal in every stage of your development.

With such testimony from the great foreigner, an American of the earliest stock may be excused for cheerfulness of view.

As I said above, should I succeed in presenting the ideal of the American commonwealth, I shall have presented the ideal commonwealth *for* the world. Let it be remarked that I do not say, the ideal commonwealth *of* the world. In this difference of prepositions is involved an alternative of widely divergent propositions. Must the ideal American commonwealth be a world-state — a cosmopolitan state — or must it be a national state ? And if not cosmopolitan in its origin, must it be cosmopolitan in its application — an example for world-imitation ? These are the first questions of modern political science, and involve the first principles to be established in the construction of our ideal.

As I have indicated in my choice of words, I take it that the ideal American commonwealth must be national in its origin, and cosmopolitan in its example. This is my fundamental proposition, and to its defense I must devote a chief part of my argument.

If we regard for a moment the history of the world from the point of view of the production of political institutions, we

cannot fail to discern that all the great states of the world, in the modern sense, have been founded and developed by three branches of the Aryan race—the Greeks, the Romans and the Teutons; that these three branches are territorially European; and that, upon the European soil, they have become distinct nations. Indian America has left no legacies to modern civilization; Africa has as yet made no contributions; and Asia, while producing all of our great religions, has done nothing, except in imitation of Europe, for political civilization. We must conclude from these facts that American Indians, Asiatics and Africans cannot properly form any active, directive part of the political population which shall be able to produce modern political institutions and ideals. They have no element of political civilization to contribute. They can only receive, learn, follow Aryan example. Hence my proposition that the ideal American commonwealth is not to be *of* the world, but *for* the world—is to be national in its origin, but cosmopolitan in its application.

But if national, what shall be the nationality? The merest glance at the census tables will show us that it *is* Aryan, and predominantly Teutonic. The historic facts which I have already adduced demonstrate that it *must be* Aryan. And the historic facts which I shall now present will explain that if Aryan, it must be Teutonic. These facts are (1) the loss, in large degree, of the Aryan genius on the part of the Greeks, by their amalgamation with the Turks and other Asiatic populations, and (2) the same loss on the part of the Romans, in nearly equal degree, by their amalgamation with the Saracens in Europe and Africa, and with the Indians in South and Middle America. Only the race-proud Teutons have resisted amalgamation with non-Aryan branches, while they have suffered but in small measure the mixture of other Aryan blood. Only the race-proud Teutons, thus, have preserved the Aryan genius for political civilization; and, while guarding jealously their own type of that genius, they have supplemented it with those elements of permanent value that belong more specifically to the Greek and Roman types.

I consider, therefore, the prime mission of the ideal American commonwealth to be the perfection of the Aryan genius for political civilization, upon the basis of a predominantly Teutonic nationality, — emancipated, however, from the remaining prejudices of European Teutonism against the other branches of the Aryan family and against the genuine products of their exertions. And I conceive that the political system evolved through such a development will be the model for the political organization of the world.

If such, in truth, be the transcendent mission of the American commonwealth, — and I cannot see how any student of history can read it otherwise, — what folly, on the part of the ignorant, what wickedness, on the part of the intelligent, are involved in the attempts, on the one side to sectionalize the nation, or on the other, to pollute it with non-Aryan elements. Both have been tried, and both, thanks to an all-wise Providence, have failed ; for both were sins against American civilization, and both were sins of the highest order. We must preserve our Aryan nationality in the state, and admit to its membership only such non-Aryan race-elements as shall have become Aryanized in spirit and in genius by contact with it, if we would build the superstructure of the ideal American commonwealth.

If this proposition should be met with the objection that it contemplates an aristocratic instead of a democratic state, I would answer, that there is not now, and that there never has been, a non-Aryan democratic state ; that Aryan nationalities alone have created democratic states ; that no other peoples or populations have ever given the slightest evidence of the ability to create democratic states ; and that Aryan history is ever moving toward the realization of genuine democracy and the impartation of its example to the world. I cannot arbitrarily turn from that direction which must be followed in treading the path of the world's history, and pursue the baseless speculation of a fanatical humanitarianism.

So much for the foundation in the ideal of the American Commonwealth — Aryan nationality and national sovereignty. Let us now look to the superstructure. It does and it must

proceed from two centers of construction, *viz.*, individual liberty and self-government.

Individual liberty to the highest degree consistent with the necessities of government and the welfare of the community, defined and guaranteed by the constitution and interpreted and protected by the courts, is the most significant product of American Aryanism. The perfect development of this conception is, next to the perfection of our nationality, the most important element of the ideal which we seek in our thought and in our progress.

All political civilization rests upon human capacity; individual capacity is the basis of collective capacity; and individual liberty is the indispensable condition of the development of individual capacity. This is the Aryan doctrine upon this subject, and its first corollary is that the widest possible realm of activity must be preserved for private enterprise. Freedom of the person against arbitrary arrest or detention or condemnation, freedom of migration, freedom of business and pursuits, security of property, freedom of thought, of expression and of conscience, and exclusion of government from the realm of private affairs, — these are the most significant products of American constitutional history. And the perfection of this system of individual liberty or civil liberty, as a constitutional realm of immunity against governmental power, and as a realm of constitutional rights protected by the courts against encroachments from any and every quarter, enjoyed by every person and clearly distinguished from political functions, — this is, as I have just said more briefly, one of the main lines of approach to the ideal which our history is striving to realize. To the student of our history nothing is clearer than this. It is apparent in all of our great constitutional documents, and in all of the great events of our internal progress.

Since the formation of the constitution, 1781, two great obstacles have stood in the way of a continuous and an easy development of the great principle of individual liberty. One has been largely overcome; with the other we are to-day face to face. The first was the doctrine of the sovereignty of the

separate "States" in the Union. One of the chief corollaries of this proposition was that citizenship and allegiance were of, and to, the "State" alone, and that, therefore, the separate "States" were the definers and defenders of individual liberty. Not the consciousness of the nation but the interest of the locality was held to be the basis of the liberty of the individual. This was directly in the teeth of the great principle of the eighteenth-century philosophy—the philosophy of the revolutions, *vis.*, that civil liberty is the right of man, is cosmopolitan.

While the revolutionary view was extreme and radical, it yet contained within it the impulse which was destined to overcome the particularism of the conditions of 1781, and to lead ultimately to the true view, that civil liberty is national in its character, and must be defined by the national consciousness and defended by national power. The constitution of 1787 made a prodigious stride in this direction. It defined and guaranteed individual liberty at about every point against the ordinary powers of the central government; it defined and protected it at many points against the states themselves; and it established an independent national judiciary, furnished with the power to nullify those acts both of the central government and of the states which should violate or impair the constitutional rights and immunities of the individual.

For seventy years this sufficed; but during the last thirty years of that period the view was developed in one section of the union that the nation must define and defend individual liberty against the states at every essential point; while in the other section the determination to place the narrowest possible construction upon the guarantees of the nation against the states became the settled rule of conduct.

The national view of the subject was in the true line of the world's political progress. For in the trial of arms that came, it won; and tortuous and faint as the line of development towards the ideal often appears, still it may be said, in a large sense, that in the world's history the ideal of to-day is the battle-cry of to-morrow and the note of victory the day

after. The first constitutional act of the nation after the close of the great struggle ~~was~~ to secure the personal liberty of every individual, not only against the power of the central government, but also and especially against the powers of the states; and the second was to extend the protection of the national judiciary over individual liberty at every essential point and in behalf of every person within the whole country. With this great step in advance, we have at last come in sight of the goal towards which we are moving, and it is the ideal which a sound political philosophy approves, *viz.*, the nationalization of individual liberty, its protection by an independent, national, unpolitical judiciary, backed by the whole power of the government, and its enjoyment by every person within the land.

I do not think it need be feared that the doctrine of the sovereignty of the several states will again seriously threaten this development. The civil war fixed the principle of our polity, that the nation alone is the sovereign, that the nation alone is the real state. We do still hear, indeed, the phrase "sovereignty of the states within their respective spheres"; but this only signifies that we have not yet invented the new forms of expression to fit the new order of things. All that we can now mean by the old phrase is: that realm of autonomy reserved to the states by the sovereignty of the nation declared through the constitution.

The present menace to individual liberty proceeds from a different quarter. I say menace, rather than danger; for I do not feel that it amounts to a danger. I refer to the so-called socialistic movements in certain parts of our country, among certain classes of the population. More than twenty years ago, while a student at the German universities, I first heard the socialistic program expounded, and I then thanked Providence that my home was in a land where such vicious nonsense could never, as I supposed, gain a lodgment: for to an American, accustomed to consider government as the agent of the people, rather than as the father of the people; accustomed to consider the freedom of individual enterprise and the security of property as the chief sources of all prosperity; and accus-

tomed to see this realm of individual liberty protected by the constitution and the independent, unpolitical judiciary against the powers of the government itself, —the doctrines of socialism, which advocated the capture of the government by the masses, through an indiscriminate suffrage, and its use for the distribution of the wealth of the classes, or for conducting or controlling business enterprises, did appear the height of folly and of moral turpitude.

I have had reason to fear since then that my estimate of my country's wisdom and honesty was somewhat optimistic. I forgot for the moment the immense immigration into our country of that very element of Europe's population to which such propositions appeal. I forgot the corrupting influence of the socialistic teachings at many of the German universities upon the American students attending them, who were destined to occupy professorships of political economy in America, and to make a propaganda of these foreign notions as to the paternal character of government. And I forgot that the experiences of the war, which had nationalized our institutions, had also accustomed our own people to the expansion of governmental powers at the will of the government itself, and then to the use of these increased powers for the accomplishment of ends largely private in their character.

Of these three contributory elements in the production of a socialistic movement towards paternalism in government, *i.e.*, towards the impairment, if not the destruction, of our system of individual liberty under the protection of the constitution and the courts, the first and the third are well understood, and will doubtless be brought speedily under the control of the historic American spirit, unless the more occult and corrupting influences contained in the second shall delay this result. I am willing to concede that there is no nationality in philology and mathematics; but political science and political economy, to be of any service whatsoever, must be closely adapted to national circumstances and traditions. The young professors, filled with European culture, are prone to forget this. They are usually much better acquainted with the history and the conditions of

Europe than with those of America. They are generally radical, idealistic, and possessed by zeal for reform. I trust I shall not be considered in what I say as aiming to discourage the spirit of true reform. On the contrary, I regard it as the leaven of civilization. And I hope, furthermore, that I shall not be understood as intending any disparagement of our enthusiastic young scholars, who have had the enterprise to transfer the culture of Europe to our own shores. I only wish to caution them and those whom they teach that their general tendency in political science and political economy is to follow too closely the European habit of looking to government for the solution of every social and economic question, instead of trusting, in the majority of cases, to individual liberty and enterprise and the freedom of contract, as our fathers taught us. I especially deprecate their readiness to admit governmental control and administration into that domain which has heretofore been regarded as secure to private occupation; and I am particularly repelled by their undervaluation of our system of private property in its relation to the civilization of the human race. When they speak of governmental interference, they call it state interference, seeming to forget that in our American system the state works both through liberty and through government; and they affirm that the great error of modern civilization is the elevation of the rights of property over human rights. It seems to have entirely escaped them that there are no rights *of* property, never have been, and never can be. There are rights *of* human beings *to* property. Such rights are, therefore, also human rights, and human rights of so high an order that men will risk life itself in their defense. Much of the reasoning of our socialistic professors is simply a juggling with words, unconscious in most cases, I believe. I have not the slightest fear that their instruction will prevent the development of our system of private property towards the more secure enjoyment by every individual of what he may legally acquire, or that it will procure any considerable increase of property-holding power by government, or that it will cause the enactment of any essential restrictions upon

existing rights in the acquirement and disposition of property; but it may interrupt that development of our system by throwing obstacles in its way, whose removal may require the application of force. It may give to the ignorant and conscienceless the moral encouragement that may occasion internal strife and disorder, which always tend to develop the military side of government, and consequently to retard, at least, the development of individual liberty.

I do not, then, regard the ownership and administration by government of all the great enterprises which serve the public, as an element in the ideal of the American commonwealth. The American genius repels such a policy, and seeks to preserve so far as possible all forms of business for private pursuit; and when there is an ultimate and undeniable necessity for surrendering to government anything which has been conducted by individuals, it selects the most local organization with which to try the experiment.

Neither do I look for the destruction of the private associations and corporations into which our American society has become crystallized, and the absorption of their functions by government, as an element in the ideal of the American commonwealth. The freedom of association is an essential part of civil liberty, though it is secondary to those rights which are more strictly individual, and, in a true political philosophy, is subject in larger degree than those rights to the legislative and administrative powers of government, as well as to the power of the courts. This is especially true when the organizations springing from its exercise are endowed by the government with corporate powers. But in the ideal American commonwealth the freedom of association, incorporate and unincorporate, must continue to exist under full constitutional guaranty, protected by the courts, of all of those rights and immunities which are of a purely private character. Especially must the properties of associations be secured against confiscation by government, whether direct or through unjust taxation or unfair regulations.

I argue for the maintenance of the freedom of association in

the ideal American system not only because the absorption by government of all enterprises which transcend the powers of single individuals would so expand the powers of government as to make it highly paternal, if not absolute, but also because the exercise of such freedom produces a vast number of the most efficient training schools which the wit of man has ever devised for the development of administrative talent among the people. The holding of governmental office itself will not effect this result to any such extent, for the reason that but few governmental offices require or permit such discretion and responsibility in the incumbents as is employed in the management of associations. I firmly believe that, outside of England, no country in the civilized world contains among its citizens, in the proportion of population, one-fourth as many persons highly qualified for the conduct and administration of affairs as are to be found in the United States; and I do not hesitate to attribute this fact in large degree to our principle of the freedom of association and to the fact that great enterprises not clearly political are managed through private combinations instead of by government.

On the other hand, it is certainly true that associations which may have a public purpose and may be invested by the state with the power to compel without agreement with the party suffering compulsion, cannot be so easily controlled by the courts as can individuals; and that, therefore, the state must, in good political philosophy, invest the government with legislative and administrative as well as judicial powers over corporations. But such powers should be distinctly limited. When an association commits no act violative of the public peace, makes no attempt to exercise a power to compel, except through the forms of law administered by the courts, does not seek to deny the constitutional and legal rights of any of its members, and, on the other hand, executes faithfully and in the due forms of law any governmental power which may have been conferred upon it by law, and fulfills the public purpose which its franchise, if it have one, may have imposed upon it, — its existence, its freedom

of action and the security of its properties should be guaranteed to it by the constitution and protected by the courts. If the state, *i.e.*, the nation, should ever see fit to assume for government the ownership and administration or the entire control of any or all business enterprises transcending the capacity and powers of single individuals, it should do it through constitutional law, and not through ordinary legislative enactments. Such a policy is too fundamental to be dealt with primarily anywhere but in the constitution. As I have said, I do not think the ideal American commonwealth requires or will ever adopt such a policy.

There is no question in my mind that in some respects the powers of government have been already exaggerated in respect to incorporate associations and private corporations, and that this exaggeration has had most deleterious results in our politics, our finances and our morals. The corporations have now, in most instances, to pay individual legislators for powers and privileges, whether proper or improper, whether advantageous or disadvantageous to the public, and whether logically within the constitutional rights of the corporation or not. And by governmental interference, in behalf, as it is said, of the public, the directors of corporations have been relieved from their sense of responsibility to the other members of the corporation, and have come to regard their positions, not as trusteeships, but as inside places affording superior opportunities which they may exploit at the expense of the *bona-fide* stockholders, largely through the financial confusion created by uncertain and unfriendly legislation. Here are real dangers to our American commonwealth which can be overcome only by so restricting the powers of government in respect to corporations as to preserve what is naturally private right in them from governmental interference.

Where associations threaten individual liberty or the public security, they must come under governmental supervision and restraint, but we must take care how we allow government to lay its hands upon them under the plea or pretext of promoting the general welfare; for this plea is and always has been the

broad avenue of approach to the inner temple of all liberty. It is true that government must, in all its activities, always have in view the promotion of the general welfare, but it must not be allowed so to interpret the demands of this welfare as to violate or impair the constitutional rights of individuals or of private associations of individuals. The people, through the constitution, have determined that a broad realm of individual liberty is indispensable to the general welfare, and have empowered the independent unpolitical judiciary to protect this realm against all merely governmental notions of welfare. This is the unique product of American constitutional history; and if we listen to the wisdom of history, which is the unfolding of the divine plan, if there be any divine plan in human affairs, we shall steadily resist the advance of government upon the sphere of constitutional civil liberty, and prevent that destruction or weakening of its judicial supports which is demanded by the socialistic propaganda. Our steady effort must be for the more perfect development of that branch of our constitutional law which maintains individual liberty; for the individual soul is, in ultimate resolution, the basis and the object of all our civilization and culture. Liberty and government have one and the same end, and what can be accomplished by liberty must be left untouched by government in the ideal American commonwealth. Thus, man may become a law unto himself, and have free opportunity for the full development of the ideals implanted by his Maker in his moral and intellectual nature.

In the order of my treatment I have placed government after sovereignty and liberty. It must be remembered, however, that this is a logical and not a chronological order. Chronologically, the principles both of sovereignty and of liberty receive conscious treatment and application subsequent to the establishment of government. The existence of government is the indispensable condition for the development of sovereignty and liberty.

The American commonwealth has now, and will continue to have in its ideal perfection, a science of government which is

its own, though well adapted for general imitation as mankind reaches the higher stages of civilization. The first element in it is its principle of federalism. There is no ground, indeed, for the claim that the North Americans originated the dual system of government. If that is to be credited to any particular people, we must go as far back, at least, as to the Greeks. But that particular form of dual government which I term federalism is certainly an American product. The systems which other peoples have originated or developed have been examples rather of confederated states than of national states with dual governments. In fact, our own system began, so far as written constitutional law is concerned, as a confederacy of states — of sovereignties. The language of the constitution of 1787 may be construed, and I think should be construed, as changing the confederacy of sovereignties into a national state with federal government, *i.e.*, with a system of government in which the powers are distributed by the national constitution either expressly or impliedly, specifically or generally, between two sets of governmental organs, largely independent of each other; yet, on the other hand, it may be construed, with much show of logic, as having simply substituted the peoples of the several states for their legislatures, *i.e.*, for the organic bodies in the confederate constitution of 1781. A very large portion of the population of the whole country — at one time and for a long period a large majority of that population — held this latter view. Even now it is possibly held by a majority of our people. But I think this theory is now wholly erroneous. It will not fit the facts of our history since 1860. Those facts can be explained only upon the theory that federalism with us now means a national state with two sets of governmental organs largely independent of each other, but each deriving its powers and authorities ultimately from a common source, *viz.*, the sovereignty of the nation. And this conception of a governmental system I claim to be purely an American product. It is, however, the true ideal of federalism, and all other nations must, I believe, ultimately come to it. It reconciles the imperialism of the Romans, the local autonomy of the Greeks

and the individual liberty of the Teutons, and preserves what is genuine and enduring in each. It is, therefore, perfectly adapted for universal application.

But is federalism, even in this form, the ideal principle? Will it not give way to complete centralization of government, as nationality and the national consciousness of rights and wrongs, interests and policies, become perfected and uniform? I think there is no question that such a development of the national consciousness will require uniformity of law, and will therefore probably favor centralization in legislation, and that it will produce centralization in ultimate judicial interpretation; but it is not at all necessary that it should centralize the execution of all law and justice. A large administrative power, containing a large ordinance-making power and a large police power, may in the most completely developed national state be properly left to the localities and be secured to them by the national constitution. It seems to me that this is the ideal of the future. It is the ideal towards which our own history has been surely advancing, and it is the ideal towards which the states with purely centralized government are also now beginning to show inclination. In the attainment of this ideal, however, our American commonwealth stands in the forefront of advantage. It has worked through its period of confederation, without having been obliged to have recourse to a permanent artificial centralization in government, and it has worked out the distinction between sovereignty and government, and has organized its sovereignty distinct from its governmental system. No other nation has accomplished these things. Every other nation, therefore, is confronted by a host of difficulties which the American commonwealth has already successfully overcome. These are my reasons for claiming that here again the American commonwealth will appear as the bearer of the ideal for the world.

The second distinctive characteristic of the American governmental system is its complete emancipation from the principle of hereditary right in the holding of office or mandate; its complete separation, therefore, of public powers from property;

and its consequent treatment of public powers as public trusts in the hands of those who hold them. It needs no argument to prove that this is the ideal principle of government in respect to tenure. Not that all those who hold governmental powers by hereditary tenure use them as property; there are many shining examples of emperors, kings, princes and lords who have clearly distinguished between their public powers and their rights of property and have administered the former most conscientiously as public trusts. Nor, on the other hand, do I claim that all elected legislators and officials make this distinction and conscientiously apply it as a rule of conduct. My contention is simply that the elective principle *per se* rests upon this distinction and tends naturally to develop it, while the hereditary principle sprang from the confounding of public powers with the rights of property, and tends to perpetuate this confusion. To one who reads closely modern history, there is no question that the civilized world is drifting away from the ideas of hereditary government, and that consequently it will be obliged to embrace those of elective government. There is no other alternative. And it is to the American commonwealth that all the nations must turn for the lessons of experience. There is no doubt that we ourselves have much yet to do in the perfection of our law of suffrage and elections. The purity of elections is now the most important practical question of our political science. Its resolution is neither simple nor easy. But a comparison of our law of elections with the systems of other countries will reveal to the most cursory examination the fact that it is, as a whole, many stages in advance of them all. I cannot in this paper undertake to trace the line of development which I think the American system of election will follow in approaching its ideal. I will only say that it seems to me that that ideal must be a national law under local administration, and that the purity of elections depends more upon a proper principle of suffrage than upon ingenious machinery for the casting and counting of ballots. There is not the slightest doubt in my own mind that our prodigality with the suffrage has been the chief source of the

corruption of our elections. We must begin with the cause if we would remove the effect. But the signs are unmistakable that we are solving this question, first for ourselves, and then for the rest of mankind; for we are entirely emancipated from the conflict between the hereditary and the elective principles, and are all, therefore, sincerely interested in the development of the elective system towards its ideal perfection.

The third distinguishing characteristic of the governmental system of the American commonwealth is the constitutional independence and coordination of the departments — the “check and balance system,” as it is commonly termed. Anglophiles in political science criticise this principle as the temporary expedient of a crude political society, and to within the last decade the criticism has been generally accepted as correct. Of course if it be correct, the American commonwealth is not following the ideal lines of development in this respect; for there is nothing more certain in American history than the facts that the independence of the executive was produced in the progress from the Continental and Confederate systems to the Federal system of 1787, and that this independence, from being somewhat timidly asserted for the first forty years of our history under the present constitution, has become the firmly established practice of our government. Shall we be obliged to retrace our steps in this respect in order to put ourselves upon the ideal line of development? I think not. I think that we are upon the right line, and that those nations which have developed parliamentary government are beginning to feel, as suffrage has become more extended, the necessity of greater executive independence. Parliamentary government, *i. e.*, government in which the other departments are subject to legislative control, becomes intensely radical under universal suffrage, and will remain so until the character of the masses becomes so perfect as to make the form of government very nearly a matter of indifference. There is no doubt that we sometimes feel embarrassment from a conflict of opinion between the independent executive and the legislature, but this embarrassment must generally result in the adoption of the

more conservative course, which is far less dangerous than the course of radical experimentation. Means for a better understanding between the executive and the legislature we may indeed discover and apply, but these need in no wise impair the independence of the executive.

I think it far more supposable that parliamentary government, than that the independent executive, is a temporary expedient, — an expedient for avoiding the embarrassments of dealing with an hereditary irresponsible executive. When, in states that now have parliamentary government, the hereditary irresponsible executive shall give way to the elected responsible president, holding for a moderate term of years and reëntering again the ranks of private citizenship, — and this, I cannot but think, is to be the final result in all Teutonic systems, — I have no question that the parliamentary control of the executive will be at least greatly modified. I think we have strong reason to feel that we are on ideal lines in this respect, and that the world will be obliged to come at last upon this point also to the lessons of our experience.

I shall not undertake to discuss the many projects which have been advanced for perfecting the relation between the independent executive and the legislature. Most of them would tend, if adopted, either to the strengthening or the weakening of that independence, while the object should be simply the attainment of a better understanding between the two departments and a clearer distinction of the functions which naturally and constitutionally belong to each. I will, however, make a single suggestion, which appears to me to contain a principle clearly necessary to the further development of the relation between the executive and the legislature towards the ideal of the American commonwealth. It is this: that the respective ministers or secretaries of the executive should have membership in those legislative committees which originate the projects of law for the ways and means of administration. The ministers are certainly to be presumed to know best what is necessary and advantageous in regard to such measures, and it cannot be considered that their advice or even vote in com-

mittee would impair the independence of the legislature, since the report of the committee is only a recommendation, which the legislative body may adopt or reject at its own discretion.

But the feature *par excellence* of the American governmental system is the constitutional, independent, unpolitical judiciary, and the supremacy of the judiciary over the other departments in all cases where private rights are concerned. The constitutional judiciary exists in no other great state of the civilized world. Everywhere else the judicial system is a creature of statute law, and is therefore dependent for its continued existence upon legislative permission. Everywhere else the function of the judiciary is to interpret and apply the acts of the legislature, but in no case to nullify those acts.

I consider our judicial system the most momentous product of modern political science. Upon it far more than upon anything else depends the permanent existence of republican government: for elective government must be party government—majority government; and unless the domain of individual liberty is protected by an independent unpolitical department, such government degenerates first into majority absolutism and then into Cæsarism. Where no realm of individual liberty is reserved and secured against governmental encroachment, the people will always ultimately prefer hereditary to elective government.

There is no part of our system in regard to which I feel so surely that we are following an ideal development as I do in regard to our judicial institutions. There is no part in regard to which I am so certain that we are bound to be the example for the world; for individual liberty is, in idea, the liberty of man, whatever his clime, country or nationality. Many of Europe's most illustrious jurists and publicists are already claiming that the judiciaries of Europe interpret and apply not simply statute law and common custom, but law in its broadest sense,—law contained in the constitution as well as in statutes and customs, and that the superior law, the law in the constitution, must take precedence of statutes and customs. If there be, in the opinion of the judge, conflict between

them, the latter must give way to the former. This is declared to be the necessary logic of jurisprudence. And indeed it is; but the Europeans should write it in their constitutions, as the Americans did more than a century ago. The world is certainly moving in our train in this respect.

I regret to say and to feel, however, that there are evidences that we ourselves do not fully appreciate the vast importance of our judicial system to our liberty and our prosperity. We may pass by, as entirely unworthy of notice, the wild utterances of the few radicals who talk about the abolition of the courts. I have no fear that such an idea will ever be seriously considered by any sane community. The things to which I refer are the adoption of the principle of a term of years for the judges in most of the local judicial systems, and the entirely inadequate pay of the judges in both the national and the local systems. Both of these facts impair judicial independence and impartiality. No judge should be so circumstanced as to have to think of anybody's favor as a condition of the continuance of his office; and no judge should be obliged to seek sources of income for a reasonable support and provision for his family outside of the salary of his office. These are two of the most fundamental principles of popular liberty. Especially should the masses insist upon them. They are indispensable to the attainment of impartial justice by the masses. The dependent judge is the tool of the rich and the unscrupulous. The people must never allow themselves to be deceived by the politicians upon this point, but should always have in mind the fact that terms of years, especially short terms, and small salaries do not tend to produce judges devoted to the liberties of the people, or to secure the economical administration of justice, but rather do tend to make a party judiciary and a corrupt judiciary—a body of judges depending upon party favor for their continuance in office, and upon personal favoritism for the necessary supplement to their salaries. Such a system certainly repels great intellect and high virtue from the judicial office, offers temptations of a most corrupting character to the judges, and is hostile to even-handed justice. The tenure by

popular election of the judges, now adopted by most of the states, is also a disturbing element to judicial purity and competence, though not so serious in character as the term of years and the inadequate pay. Dickering for office, though it be indulged in but once in a lifetime, is degrading to a judge; and dickering with the party caucus and with the electors at the polls is more degrading than soliciting appointment from the executive. When now the tenure by popular election is connected with the term of years and the inadequate salary, as is the case in the majority of our states, the judicial system is made subject to conditions most hurtful to its ideal development. I do not forget the argument that the elective tenure makes the judge independent of the executive power in the *origin* of the tenure. I simply do not regard this consideration as of any practical value. The judicial independence rests upon the security of the tenure once established against *termination*, rather than upon the manner of its *origin*.

Most fortunately, the national judicial system has preserved the line of true progress. With its principles of tenure by executive appointment and term of good behavior, and with the now well-established interpretation of the phrase "good behavior," as presumed until conviction by process of impeachment for crime or misdemeanor as understood in our ordinary law, we have now only to make the salaries such as to command the highest juristic intelligence and the most exalted virtue and protect them against undue temptation, and we shall have the ideal judicial system for the American commonwealth. Such a system will finally transform, by its example, the local judiciaries in America; and then, with its principle of the supremacy of the judiciary over the other departments of government in the definition and defense of private rights, will lead the course of juristic development everywhere.

And so I return, in conclusion, to the propositions with which I started out, *viz.*, that the American commonwealth is already based upon ideal principles and has advanced many stages in an ideal development; that it has only to be freed from some

crudities and excrescences, and to pursue steadily the general course towards which its history points, in order to reach the perfection of its ideal; that, therefore, we need no revolution of our system, which would in fact drive us from the line which leads to the attainment of our ideal; and that we are compelled to regard those who should favor and advise such a revolution as the enemies in principle of the American republic and of the political civilization of the world.

JOHN W. BURGESS.

THE ADOPTION OF THE PENNSYLVANIA CONSTITUTION OF 1776.

THE long and fierce struggle of the so-called "Constitutional" and "Republican" parties in Pennsylvania over the state constitution framed in 1776 was greatly confused and complicated by the old party divisions between the eastern and the western counties, by the proprietary controversy of 1755-65, by the ethnic and religious divisions of the colony, and by the movement for national independence. It is therefore necessary to trace certain events prior to the apparent beginnings of the constitutional struggle, in order properly to understand it.

The Pennsylvania Assembly, elected in October, 1773, was controlled by the "eastern" party — a coalition of the Quaker, German and commercial interests — led by Joseph Galloway. The qualified franchise under which the assembly was elected may have somewhat lessened its representative quality, but the majority unquestionably acted as the moderate elements of the community wished, in deprecating all violent or illegal action in the controversy with Great Britain. When, therefore, the letter of the Massachusetts committee of correspondence, announcing the passage of the Boston Port Bill, reached Philadelphia, May 19, 1774, the "popular" or "violent" party recognized that other means than the action of the assembly must be employed to give the colony even the semblance of "supporting Massachusetts." It was necessary, however, to make this support a moderate one; for any extreme action might fail of acceptance even from the mass-meeting that the "popular" party planned to employ as the vehicle for promulgating the sentiments of Pennsylvania. A plan of action was arranged among the leaders of the "popular" party, Dickinson, Thomson, Reed and Mifflin.¹

¹ See Stillé, *Life of Dickinson*, 341; *New York Historical Society Collections*, 219; *Diary of Christopher Marshall*, 1.

It was judged proper to call a meeting of the principal inhabitants to communicate to them the contents of the Letter and gain their concurrence in the measures that were necessary to be taken. As the Quakers, who were principled against war, saw the storm gathering, and therefore wished to keep aloof from danger, were industriously employed to prevent anything being done which might involve Pennsylvania farther in the dispute, and as it was apparent that for this purpose their whole force would be collected at the ensuing meeting, it was necessary to advise means so to counteract their designs as to carry the measures proposed and yet prevent a disunion, and thus, if possible, bring Pennsylvania's whole force undivided to make common cause with Boston. . . . To accomplish this it was agreed that T[homson], who was represented as a rash man, should press for an immediate declaration in favor of Boston, and get some of his friends to support him in the measure; that Mr. D[ickinson] should oppose and press for moderate measures, and thus by an apparent dispute prevent a farther opposition and carry the point agreed on. . . . The meeting was held in the Long Room. The company was large, and the room exceedingly crowded. The Letter received from Boston was read, after which Reed addressed the Assembly with temper, moderation, but in pathetic terms. Mifflin spoke next, and with more warmth and fire. Thomson succeeded, and pressed for an immediate declaration in favor of Boston, and making common cause with her; . . . Dickinson then addressed the company. . . . After he had finished T[homson] . . . simply moved a question, that an answer should be returned to the Letter from Boston; this was put and carried. He moved for a committee to write an answer; this was agreed to, and two lists were immediately made out and handed to the Chair. The clamor was then renewed on which list a vote should be taken. At length it was proposed that both lists should be considered as one, and compose the comtt. This was agreed to, and the company broke up in tolerable good humor, both thinking they had in part carried their point. . . .¹

Even after this wire-pulling and address, the committee appointed by the meeting to write to Boston was so moderate in feeling that it recommended payment for the tea destroyed, and thus proved only a damper on the patriots of Massachusetts. But the popular party was not content with this moderate action. The project for a general congress was

¹ Stillé, Dickinson, 107 and 342.

already a matter of discussion, and the extreme Whigs saw in it their one hope, since they could expect no support from the assembly, of voicing their wishes in some more potent form than the vote of a meeting.¹ Another mass-meeting was therefore called, and "though the Quakers had an aversion to town meetings, and always opposed them,"² it was managed that they gave their consent and assisted in preparing the business, yet with so much doubt of the leaders of the movement as to insist that the speakers should submit their speeches in writing before the meeting.³ Nearly eight thousand people were said to have attended, and resolutions declaring the Boston Port Bill unconstitutional were unanimously adopted.⁴ An address to the governor was also voted,⁵ asking him to convene the assembly, "in order to prevent further divisions in the city, and to convince the public that it was not the intention of the warm spirits to involve the province in the dispute without the consent of the representatives of the people." The governor replied "that he could not call the assembly for the purposes mentioned, and that he was sure the gentlemen did not expect . . . that he would." "The answer was such as was expected . . . and was far from disagreeable to the advocates of America."⁶

Promptly upon the governor's refusal to convoke the assembly, a call was issued to the county committees of correspondence⁷ throughout the colony, to name delegates to attend

¹ "The reason of their . . . determination for a [continental congress] was their not having a sufficient confidence in the members who composed the House of Assembly, and more particularly in the speaker [Galloway], whose influence was great." Thomson.

² Stille, Dickinson, 343.

³ Charles Thomson's Narrative. Stille's Dickinson, 344.

⁴ New York Historical Society Collections, 1878, 223; Reed's Joseph Reed, I, 69.

⁵ Diary of Christopher Marshall, May 8, 1774, p. 6.

⁶ Charles Thomson's Narrative. Stille's Dickinson, 344.

⁷ The origin of these committees was as follows: "Under the Association which was formed in opposition to the Revenue Laws of 1767, and which lasted for upwards of two years, Committees were established not only in the Capitals of every Province, but also in most of the country towns and subordinate districts. In the commencement of the present opposition these Committees had been re-

a "Provincial Conference" in Philadelphia, July 15. The governor at once realized his mistake in giving popular feeling only an extra-constitutional body to speak through, and, using an Indian outbreak as an excuse, he issued warrants summoning the assembly to meet July 18, hoping thus to forestall the conference. The popular leaders, however, "had no confidence in the members of the assembly, who were known to be under the influence of Galloway and his party,"¹ and they therefore carried out their plan. When the conference met, it adopted a series of resolutions framed by Dickinson,² and "instructions" to their representatives in the assembly "requesting" them to appoint delegates to attend a congress of deputies from the several colonies; and to reënforce this "request," it was announced that if the assembly failed to accede, the conference would name delegates itself. The assembly was further "instructed" to demand

a renunciation on the part of Great Britain, of all powers under the statute of the 25 of Henry the Eighth, chapter the 2d — of all powers of internal legislation — of imposing taxes or duties internal or external — and of regulating trade, except with respect to any new articles of commerce, which the colonies may hereafter raise, as silk, wine, &c., reserving the right to carry these from any one colony to another — a repeal of all statutes for quartering troops in the colonies, or subjecting them to any expence on account of such troops — of all statutes imposing duties to be paid in the colonies, that were passed at the accession of his present Majesty, or before this time; which ever shall be judged most advisable — of the statutes giving the courts of admiralty in the colonies greater power than courts of admiralty have in England — of the statutes of the 5th of George the Second, chapter the 22d, and of the 23d of George the

vised, extended and reduced to system; so that when any intelligence of importance, which it was necessary the people at large should be informed of, reached the Capital, it was immediately dispatched to the County Committees and by them forwarded to the Committees of the districts, who disseminated it to the whole body of the people." Charles Thomson, in *New York Historical Society Collections* for 1878, 218.

¹ Charles Thomson's Narrative. Stillé's Dickinson, 345.

² Printed as *An Essay on the Constitutional Power of Great Britain over the Colonies . . .* (Philadelphia, 1774), as well as in the *Journal of the House of Representatives of Pennsylvania, . . .* (Philadelphia, 1782).

Second, chapter the 29th — of the statutes for shutting up the port of Boston — and of every other statute particularly affecting the province of Massachusetts Bay, passed in the last session of Parliament.

These resolutions were laid before the assembly July 20.¹ Thomson states² that that body would not have appointed delegates but for the knowledge that the conference would name them if the assembly failed to do so. Save for this knowledge it is hardly possible that Galloway would have disobeyed the ministerial instructions from England to discourage the congress. Seeing that the congress was a certainty, he endeavored to turn it to the advantage of the conservative party by making it a conservative body. He promptly named five of the assembly's most conservative members as delegates to congress, thus defeating the wishes of the popular party, who were allowed only one delegate; and discarding the "instructions" of the conference, he secured the adoption of "instructions" drawn by himself,³ binding the deputies to "avoid everything indecent and disrespectful to the mother state."⁴

Neither the delegation nor the instructions seem to have been satisfactory to the people, and their unpopularity was increased by the "cold" conduct of the Pennsylvania deputies in the congress which met September 5. This feeling became so strong during the sitting of congress that at the annual election for assembly in October eight old members were defeated by candidates of the popular party.

Mr. Dickinson was chosen almost unanimously a representative of the county. The broad-brims began an opposition to Mr. Mifflin,

¹ Votes and Proceedings, VI, 519.

² Charles Thomson's Narrative — Stillé's Dickinson, 346.

³ "I went to Congress at the earnest solicitation of the Assembly of Pennsylvania. I refused to go unless they would send with me, as the rule of my conduct, instructions agreeable to my own mind, — they suffered me to draw up those instructions; — they were briefly to state the rights and the grievances of America, and to propose a plan of amicable accommodation of the differences between Great-Britain and the Colonies, and of a perpetual union, I speak now from the records of Pennsylvania, where these instructions are. Upon this ground, and with a heart full of loyalty to my Sovereign, I went into Congress, and from that loyalty I never deviated in the least." Examination of Joseph Galloway, p. 47.

⁴ Votes and Proceedings, VI, 520.

because he was too warm in the cause. This instantly alarmed the friends of liberty, and ended in the election of Mr. Mifflin by eleven hundred votes of thirteen, and in the election of our secretary, Mr. Charles Thomson, to be burgess with him. This is considered here as a most complete and decisive victory in favor of the American cause. And it is said it will change the balance of the legislature against Mr. Galloway, who has been supposed to sit on the skirts of the American advocates.¹

Nothing better shows the seriousness of this conservative defeat than the almost immediate election of Dickinson to the general congress. For years, in spite of his personal reputation, he had been kept out of the assembly by the influence of Galloway, who had both party and personal reasons for opposing him. Yet now so strongly ran the current, that Galloway dared not oppose Dickinson's election, and the vote in the assembly was unanimous in adding him to the delegation. The joy of the "patriots" in the congress at this change in Pennsylvania towards "the spirit and principles of liberty" was shown by the way they heaped honors upon Dickinson. The committees of congress had already been appointed, but a new one was created, to prepare an address to the people of Quebec, and Dickinson was selected to draft the paper; moreover, when the draft of the Petition to the King was disapproved, he was added to the committee that had it in charge, to reshape it. Just so much as they honored him, so reasoned the "extreme" delegates, did they injure Galloway, and the popular party both in and out of congress turned to and flattered Dickinson, as the only man able to counteract the influence of Galloway and the "cold" conservatism of Pennsylvania.

For the moment the popular party was paramount in the assembly and in the city. Everything Galloway had done in the congress was, despite the secrecy of its proceedings, whispered abroad to injure him. A mob twice threatened his house, and a halter was left at his door. But if Galloway personally had lost much of his popularity, the natural conservatism of the colony was not utterly destroyed. When the enthusiasm was

¹ John Adams, Oct. 7, 1774. *Familiar Letters*, 45.

strongest, an attempt to obtain a vote of the assembly to enforce the resolves of the congress was found hopeless. By framing the resolution in the most general terms a unanimous vote was secured, however, "approving"¹ congress' proceedings. Galloway, unyielding even to this, yet not daring to record an adverse vote, absented himself till the resolution was put out of the way.²

Disappointed in the action of the assembly, the popular party once more resorted to extra-constitutional methods. A "Provincial Convention" was summoned, which met at Philadelphia, February 18, 1775, and adopted a series of resolutions drawn by Dickinson, which may be regarded as indicating what the popular party had attempted to carry in the assembly. In these, the action of the congress was warmly extolled, and support was pledged to the "association" that had been established; the commercial interest was both cajoled and threatened; and though the conservatives had hitherto been "successful in baffling all attempts" of the violent party to prevail on the people to prepare for war with the mother country, so that the convention did not dare to recommend arming, yet a resolution was adopted looking to the manufacture or procurement of saltpetre and gunpowder as "largely as possible," the obvious purpose being veiled by an absurd reference to the Indian trade.³

Galloway was not prepared to yield the fight without one more struggle, and in the assembly he endeavored to carry a resolution to petition the king independently of the other colonies. As this was looked upon by the popular party as equivalent to a desertion by Pennsylvania of her sister colonies, it precipitated the fiercest contest yet fought in the assembly. The popular party first attempted to admit the public to the debate, intending to pack the galleries with their own partisans. Galloway succeeded in defeating this, and he had

¹ Even this was more than Governor Penn believed the assembly would vote, and it caused him "great surprise." See Reed's *Joseph Reed*, I, 90.

² *Proceedings of the Convention* . . . Philadelphia: 1775.

³ *Votes and Proceedings*, VI, 552

actually obtained a partial vote in favor of his measures, when news reached Philadelphia of the "restraining acts" and harsh measures proposed by the British ministry.¹ Instantly public opinion reacted, Dickinson's measures were voted by the assembly, and Galloway, finding himself "alone and unsupported among a set of men every one of whom had approved of the measures [he] was censuring," left the assembly, refused an election to the Continental Congress, and withdrew to his country-seat. Here Franklin, his closest friend, though now one of the popular party, sought him by desire of the congress, and endeavored to win him to the cause, but he refused ; and from that time he ceased to be a factor in the politics of the colony.²

Galloway's withdrawal left Dickinson for the moment master of the situation. Though he had hitherto sided with the popular party, yet he had much in common with its foes ; for he was a natural conservative, and a Quaker in religion. His affiliation with the extremists seems to have been due to the control Galloway had hitherto exerted over the conservatives, which, with the personal antipathy between the two men, had forced Dickinson into the popular ranks. Even before Galloway had been pushed aside, the extremists "hoped for [Dickinson's] assistance, but were not sure how far he would go if matters came to an extremity," while "the Quakers courted and seemed to depend on him." Personally popular, with an unblemished career, independently rich, and now trusted and followed by both parties of the colony, John Dickinson, in the spring of 1775, apparently held the destinies of Pennsylvania in his own hands.

When the assembly met on May 1, 1775, the whole condition of affairs had been changed by the conflicts at Lexington and Concord. Pennsylvania had stood hitherto almost alone among the colonies in refusing to prepare for war, but now the Quaker-Moravian influence could no longer restrain the people.

¹ Examination of Joseph Galloway, 54.

² Charles Thomson, in Stillé's Dickinson, I, 342.

³ New Jersey Archives, X, 573, 581.

No sooner was the collision between the king's troops and the Massachusetts minute-men known than voluntary military "associations" for the defense of the colony and "the liberties of America" were formed throughout Pennsylvania.¹ So strongly ran the current that in Philadelphia alone, in barely six weeks, was seen the "wonderful phenomenon," as John Adams called it, of "a field day, on which three battalions of soldiers were reviewed, making full two thousand men. . . . All this has been accomplished in this city, since the 19th of April; so sudden a formation of an army never took place anywheres."² The enthusiasm of the movement was enormous. The most popular clergymen preached eloquent sermons to the "associators." The leading men of the province sought the command of companies or battalions. Dickinson himself was made colonel of the 1st battalion, and as such, commander-in-chief. In three months twenty thousand volunteers had enrolled themselves.³

Owing to this voluntary militia, Pennsylvania was able to respond to the requisition for eight battalions which Congress made upon it almost immediately after meeting, May 10, 1775, without embarrassing or alienating the sects opposed to warfare. But in the midst of the general arming the question

¹ "This day a number of the associators of the militia met in each of the wards of the city, to form themselves into suitable companies, and to chose their respective officers." Christopher Marshall's Diary, May 1, 1775, p. 22.

² John Adams, May 29, 1775. Familiar Letters, 39.

³ These associators, though drawn almost wholly from the Whigs, nevertheless had another element among them, as is shown by the following quotations:—

"Last Thursday & the preceding Tuesday I appeared in Battalion in my uniform, as a private man in Captn. Shees company. I have no opinion that this association will be very useful in defending the City: as they have refused to be bound by any Articles, & have no subordination. My Inducement principally to join them is; that a man is suspected who does not; & I chuse to have a Musket on my shoulders, to be on a par with them; & I believe discreet people mixing with them may keep them in Order." Diary of James Allen, Oct. 14, 1775. *Penn. Magazine*, IX, 186.

"It's admirable to see the alteration of the Tory class in this place, since the account of the engagement in New England. Their language is quite softened, and many of them have so far renounced their former sentiments as that they have taken up arms, and are joined in the association." Christopher Marshall's Diary, May 1, 1775, p. 22.

could not long be kept out of the assembly; for the popular party, who looked upon the Quakers and Germans as Tories or neutrals, saw in it a weapon to be employed not merely against Great Britain, but against the believers in "non-resistance." Even before it was known that Congress would call for troops, a petition from the "committee of the city and liberties of Philadelphia" had been presented to the assembly,¹ praying that the colony should be put in a state of self-defense; and this was quickly followed by a second, begging that the associators should receive pay, and that the non-associators should be compelled to contribute to this expense — a suggestion that was at once echoed in another petition from the officers of the associators. The Quakers, however, were as scrupulous of paying taxes for war as of fighting, and daring neither to refuse nor to yield, the assembly hit upon the device of issuing bills of credit to pay the associators. A bill for this purpose was passed, but only to be vetoed by the governor. Surrounded by difficulties, the assembly, guided by Dickinson, threw legality to the winds. It appointed a Committee of Safety² and authorized it to issue bills of credit, thus creating an absolutely illegal body, with almost indefinite executive authority, and making it all-powerful through the control given to it over the associators. Finally, "the house, taking into consideration that many of the good people of this province are conscientiously scrupulous of bearing arms," earnestly recommended "to the Associators for the defense of their Country, and others, that they bear a tender and brotherly regard to this class of their fellow-subjects,"³ and then (June 30) adjourned till September.

If Dickinson's course in the assembly had been a difficult one, his position in the Continental Congress was little less so. Just before Congress met, and while the excitement over Lexington and Concord was greatest, the vacancies in the Pennsylvania delegation to Congress, caused by Galloway's refusal to serve and by the election of Rhoades as Mayor of Philadelphia, had been filled by the appointment of Thomas Willing and

¹ Votes and Proceedings, VI, 589.

² *Ibid.*, 593.

³ *Ibid.*, 594.

James Wilson, and to these Franklin was added as soon as he arrived from London, making the delegation a far less conservative one than that to the first congress. Moreover the instructions, which Dickinson drew, were somewhat relaxed. Yet the colony was opposed to the actual formation of a Continental army, and its representatives, whatever their private views, yielded to the measure only with reluctance and after warm debates. In giving way, Dickinson forced a compromise. Personally he was quite ready for war, but to make the necessary measures less repugnant to the conservatives and the "scrupulous" in Pennsylvania, he insisted that a last effort for peace should be made. An army should be raised, but a second petition to the king should be sent. Such were his terms, and Congress bowed to them, though with bad grace on the part of the extremists, who desired an offensive war, a seizure of all crown officers, the formation of state governments and a declaration of independence, and who rightly foresaw that till the king received and took action on this petition the policy must be a drifting one, with no decisive measures possible. Such was Dickinson's power that the extremists in Congress were forced to let him draw both the "Declaration on Taking up Arms" and the "Petition to the King" according to his own mind; and the curious difference in tone between the two papers can be explained only when the political condition of Pennsylvania in July, 1775, is understood. The extremists never forgave him for this dictation to Congress and for giving their measures "such a squinting turn, declaring war yet begging for peace." Only a year before, Dickinson had been hailed as the pilot who was to bring the colony into the popular movement. Now his "abilities and virtues, formerly trumpeted so much in America, have been found wanting" ¹ "A certain great fortune and piddling genius, whose fame has been trumpeted so loudly, has given a silly cast to our whole doings." The extremists adopted towards him the same methods they had employed to crush Galloway. Letters were written decry-

¹ John Adams, July 23, 1775. *Familiar Letters*, 84.

ing his conduct, and picturing him as influenced by selfish motives. "Whispers to his disadvantage"¹ were circulated.

However, he maintained his ground among the generality of the people in his own province, and particularly among those who still wished and hoped to see a reconciliation take place; and it must be allowed that, if his judgment had not quite approved the measure, yet on account of the people of Pennsylvania it was both prudent and politic to adopt it. Without making an experiment it would have been impossible ever to have persuaded the bulk of Pennsylvania but that an humble petition, drawn up without those clauses against which the ministers and Parliament of Great Britain took exception in the former petition, would have met with a favorable reception and produced the desired effect; but this petition, which was drawn up in the most submissive and unexceptionable terms, meeting with the same fate as others, obviated objections that would have been raised, and had a powerful effect in suppressing opposition, preserving unanimity, and bringing the province a united body into the contest. Whatever hand Dickinson had in the promoting, it ought to have redounded to his credit as a politician.

The October elections for the assembly, although somewhat changing the *personnel* of that body, left Dickinson if anything more influential.² Under his guidance the old delegation of the Continental Congress was reëlected, with the addition of Robert Morris and Andrew Allen, which gave it added conservatism. Of even more importance were the instructions he framed for them, binding the delegation to "dissent from and utterly reject any proposition, should it be made, that may cause or lead to a separation from our mother country or a change of the form of this government."³

The most difficult question, however, was the old one of a military force. No sooner was the assembly met than peti-

¹ Charles Thomson's Narrative. Stillé's Dickinson, 350.

² The strength of the conservatives is shown by the vote; for out of less than four thousand they received the following numbers: "Yesterday were chosen the following persons, Representatives for this county: Joseph Parker, 3077 votes; John Dickinson, 3122; Michael Hillegas, 3111; George Gray, 3107; Thomas Potts, 3103; Samuel Mills, 3098; Robert Morris, 1882; Jonathan Roberts, 1700." Christopher Marshall's Diary, October 3, 1775, p. 44.

³ Votes and Proceedings, VI, 647.

tions poured in from "associators," "committees," "officers" and various other bodies, pointing out the great injury from the lenity shown towards persons professing to be conscientiously scrupulous against bearing arms, that people sincerely and religiously scrupulous are but few in comparison to those who upon this occasion, as well as others, make conscience a convenience; that a very considerable share of the property of this province is in the hands of people professing to be of tender conscience in military matters; that the Associators think it extremely hard that they should risk their lives and injure their fortunes in the defence of those who will not be of the least assistance in this great struggle; that the memorialists therefore humbly conceive that some decisive plan should be fallen upon to oblige every inhabitant of the province either with his person or property to contribute towards the general cause, and that it should not be left, as at present, to the inclinations of those professing tender conscience, but that the proportion they shall contribute may be certainly fixed and determined.

To reenforce these petitions a resolution was obtained from the Continental Congress recommending the formation of "all able-bodied men between the years of sixteen and fifty into companies of militia." Counter-petitions from the Quakers and Germans were promptly laid before the assembly. That body was still strongly Quaker-German in membership, and was unquestionably opposed to enforced military duty, or even to the support of an armed force by general taxation. Knowing this, the associators laid counter-statements before the assembly, which purported to be petitions in answer to the Quaker and German memorials, but which were in truth very little less than orders to the assembly. The associators from the first had naturally been drawn chiefly from the Whig or violent party, and they now numbered nearly twenty thousand organized troops. Opposed to the wishes of this force of armed men were only the sects bound by their beliefs to "non-resistance." The associators therefore declared that "the people will not longer submit to see the public burthen so unequally borne," and begged that "to preserve the peace of the province and the consequence of your honourable house (which we would wish to govern us in this important struggle in preference to

any other body)," you will "be pleased to take into consideration our former memorials." In other words, the armed associators had the power to enforce their wishes, and if the assembly would not do what they demanded, some other body would be found more compliant. To increase the pressure the "violent" members moved to make the debates on the petitions public, and though this was voted down, the members knew that the proceedings would be no secret out of doors. The assembly gave way, and just before adjourning passed an act "for levying taxes on the non-associators."¹

This concession only whetted the appetite of the associators. When the assembly again met in February, 1776, it was to encounter a storm of petitions and complaints. The system of taxation devised was unfair, it was urged, and must be changed so as to make it bear more heavily on the non-associators. A test or oath must be taken before exemption from military duty was allowed. Associators must be admitted to citizenship without regard to the property qualification. All officers of the associators must be elected annually by each battalion. The non-associators must be disarmed. Such were the most far-reaching demands of the associators. The assembly granted few of them: taxation was made slightly more favorable; two associators in each company were allowed to vote for assemblymen; the non-associators were recommended to give up their arms; while, to prop its own authority, the assembly ordered that an oath of allegiance to itself should be required of the associators. Another demand, however, from the extremists in various counties was quite as serious. From York, Berks, Bedford, Cumberland and other "back" or western counties, petitions were presented begging an increase in the number of members of assembly. "A great number of the inhabitants of Philadelphia" petitioned to the same effect. In spite of the opposition of the conservatives, a new apportion-

¹ "James Cannon visited me this morning respecting a petition the Committee of private [and] officers intended to send to the Assembly. I gave as my judgment that no time should be lost, as I was apprehensive that the Assembly might soon adjourn, in order to prevent any application of them respecting a General Militia law." Christopher Marshall's Diary, October 20, 1775, p. 48.

ment, adding seventeen members to the assembly, was promptly made, and an election was ordered. Of equal importance was the rejection, on the last day of the session (April 6), of a motion to "alter the instructions given at their last setting, to the Delegates of this Province in Congress."¹

The extremists hoped to gain control of the assembly by the elections held on May 1, 1776, for the additional assemblymen, but they met with a bitter disappointment. Everywhere their wish for national independence was understood, and this revolted many who had hitherto given them aid. Instead of gaining, they lost strength in the assembly. If Pennsylvania was to give even the semblance of support to the independents, some other body or force must be called into existence to do it. To appeal to the people was no better, and the "violents" therefore turned for assistance to the Continental Congress and the associators.

The moment the result of the May elections was known the contest was transferred to the Congress. For months there had been friction between the New England delegates and the Pennsylvania conservatives.² On May 6, or as soon as the re-

¹ "In this colony [Pennsylvania] the spirit of the people is great, if a judgment is to be formed by appearances. They are well convinced of the injury their assembly has done to the continent by their instructions to their delegates. It was these instructions which induced the middle colonies and some of the southern to backward every measure which had the appearance of independency to them is owing the delay of Congress in agitating questions of the greatest importance, which long ere now must have terminated in a separation from Great Britain to them is owing the disadvantages we now experience for want of a full supply of every necessary for carrying on the war. Alliances might have been formed, and a diversion been given to the enemy's arms in Europe or the West Indies, had those instructions never appeared." Elbridge Gerry to James Warren, May 2, 1776. Austin's Gerry, I, 179.

² "Since my first arrival in this city the New England delegates have been in a continual war with the advocates of proprietary interests in Congress and this colony. These are they who are most in the way of the measures we have proposed, but I think the contest is pretty nearly at an end, and am persuaded that the people of this and the middle colonies have a clearer view of their interest, and will use their endeavors to eradicate the ministerial influence of governors, proprietors and jacobites, and that they now more confide in the politics of the New England colonies than they ever did in those of their hitherto unequal governments." Elbridge Gerry to James Warren, June 25, 1776. Austin's Gerry, I, 194.

sult of the election was known, John Adams made a motion in Congress¹

that it be recommended to the several assemblies and conventions of these United Colonies, who have limited the powers of their delegates in this Congress by any express instructions, that they repeal or suspend those instructions for a certain time, that this Congress may have power, without any unnecessary obstruction or embarrassment, to concert, direct and order such further measures as may seem to them necessary for the defence and preservation, support and establishment of right and liberty in these colonies.

This resolution was at once referred to the committee of the whole, where, after a heated debate, it was negatived. Defeated in this, Adams and Lee framed another motion:

Whereas it appears absolutely irreconcilable to reason and good conscience for the people of these colonies now to take the oaths and affirmations necessary for the support of any government under the crown of Great Britain, and it is necessary that the exercise of every kind of authority under the said crown should be totally suppressed and all the powers of government exerted under the authority of the people of the colonies, for the preservation of internal peace, virtue and good order, as well as for the defence of their lives, liberties and properties against the hostile invasions and cruel depredations of their enemies: therefore

Resolved, That it be recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs hath been hitherto established, to adopt such government as shall in the opinions of the representatives of the people best conduce to the happiness and safety of their constituents in particular, and America in general.²

Against this resolution Duane, of New York, very strongly protested, as beyond the power of Congress.³ No one ques-

¹ Works of John Adams, II, 489.

² Journals of Congress, May 15, 1776. "You know the Maryland instructions and those of Pennsylvania. I am greatly in doubt whether either of their Assemblies or Conventions will listen to a recommendation the preamble of which so openly avows independence & separation. The lower Counties will probably adhere to Pennsylvania." James Duane to John Jay, May 18, 1776. Jay Papers, I, 61.

³ Works of Adams, II, 490. "The General Assembly of Pennsylvania is averse to any change. The people of this town [Phila.] assembled last Monday in the state-house yard and agreed to a set of resolutions in favor of a change. Another

tioned the purpose of the motion,¹ yet the extremists succeeded in carrying it by a vote of seven colonies to four, and it was immediately published. "It has occasioned a great alarm here," wrote Livingston from Philadelphia, "and the cautious folks are very fearful of its being attended with many ill consequences next week when the assembly are to meet."²

James Allen says in his *Diary* that the resolution was read at the Philadelphia coffee-house. One man only huzzard, in general it was ill-received: . . . The Congress have resolved to recommend it to the different Colonies to establish new forms of Government, to get rid of oaths of allegiance, etc. I think the Assembly of this province, will not consent to change their constitution, and then heigh for a convention! A Convention chosen by the people, will consist of the most fiery Independants.³

As early as February 28, 1776, the committee of Philadelphia⁴ had voted to summon a convention to meet April 2, but on March 4, by advice of the committee of correspondence, the call was "suspended for a few days." The suspension was for the purpose of observing the event of sundry petitions that were before the assembly, according to a favorer⁵ of the call, though another records that this project of a convention was that of "a few warm members of the committee," and that "the measure, I am told, is so much condemned by thinking people, that it is dropped for the present."⁶ Promptly on the publication of the above-mentioned resolution of

body are signing a remonstrance against the acts of that meeting and in support of that assembly. The committee for the county of Philadelphia have unanimously supported the assembly and protested against any change. It is supposed the other counties will follow their example and take a part in the dispute. Is it not to be feared that this point of dissention will spread itself into the adjoining colonies?" James Duane to John Jay, May 25, 1776. Jay Papers, I, 63.

¹ Wilson of Pennsylvania urged that "in this province, if that preamble passes, there will be an immediate dissolution of every kind of authority; the people will be instantly in a state of nature. Why then precipitate this measure? Before we are prepared to build the new house, why should we pull down the old one, and expose ourselves to all the inclemencies of the season?" Works of John Adams, II, 491.

² Papers of John Jay, I, 60.

³ *Pennsylvania Magazine*, IX, 187.

⁴ *Diary of Marshall*, 61.

⁵ *Diary of Christopher Marshall*, March 4, 1776, p. 61.

⁶ Judge Yeates to Col. Burd, Lancaster, March 7, 1776. Shippen Papers, 248.

Congress the project was renewed, and on May 16 a meeting of "a number of persons" concluded to call a convention with speed; and "to protest against the present assembly's doing any business in their House until the sense of the Province was taken in the Convention to be called."¹ To carry out these purposes, the meeting requested of the "Committee of Inspection and Observation of the City of Philadelphia" that "a general call be made of the inhabitants of the City and Liberties . . . in order to take the sense of the people." This was considered at the meeting of the committee on May 18, and agreed to, with only five dissenting voices.

The meeting so called was held in the state-house yard, May 20, 1776.² One estimate was that four thousand people attended. It was unanimously voted that the instructions of the assembly to the delegates in Congress ought to be repealed; that the present assembly was unfit to frame a new government; that that body had no right to execute the resolves of Congress; that the present government was not competent to the present conditions; and, finally, that a provincial convention ought to be chosen "by the people." More important still was the adoption, with but one dissenting voice, of the "Protest" framed on the 18th, by which the meeting renounced and protested against the "authority and qualification" of the assembly. This paper at once produced a "Remonstrance"³ from certain "inhabitants of the city," which was "carried by numbers, two and two, into almost all parts of the town to be signed by all 'tag, longtail and boby,' and also sent into the country, and much promoted by the Quakers."⁴ These two papers were laid before the new assembly the day after it met, May 21, 1776. That body at once appointed a most conservative committee to prepare a memorial to Congress on its resolve of May 15, which it was understood would protest against the power of Congress to interfere in the local governments, and would claim for the assembly the sole right of

¹ Diary of Christopher Marshall, 71.

² *Pennsylvania Evening Post*, May 21, 1776.

³ Votes and Proceedings, VI, 731.

⁴ Diary of Christopher Marshall, 73.

framing a new government, if such should be found necessary. What the committee of the assembly intended to frame is probably indicated in the phrasing of the Address¹ of the Committee of Inspection of the County of Philadelphia,² which, though signed by Hamilton, was really drawn by Dickinson, and was naturally what he wanted adopted by the assembly in which he was so powerful. In the words of this Address :

With the deepest concern we have lately observed that the ground on which our opposition to the arbitrary and oppressive measures of the British Ministry was first made, is so totally changed. Instead of our joining hand and heart in forwarding a reconciliation with our parent state, on constitutional principles, which is the object we ought ever to have kept in view, as the only termination of our disputes which can possibly give us happiness and security, a system has been adopted by some persons in the city and liberties of Philadelphia which tends immediately to subversion of our constitution.

When we recollect the declaration of Congress, that they "mean not to destroy the union which has so long happily subsisted, and which they sincerely wish to be restored"; when we think of the known instructions given to the delegates of the several provinces, as well as to those of our own, we are alarmed at the prospect of a disunion which must attend the prosecution of a scheme that will, in the end, not only set province against province, but (more dreadful to think) foment civil discords in each.

Should our inveterate enemies be so lost to all sense of justice and humanity as to persist in their infernal plan of despotism; should they drive us by their violence to that last shift, a declaration of independence, every one will then be convinced of the necessity of such a measure, and we shall be as one man, so united and strengthened by the conviction, as to bid defiance to all their attempts. . . .

What we have to offer and advise is, that you will most religiously adhere to the instructions given to our delegates in Congress. We consider them our greatest security. And we further most sincerely

¹ *Pennsylvania Evening Post*, May 21, 1776.

² The Committee of Inspection and Observation for the City and Liberties of Philadelphia must not be confused with this body. The extremists controlled the first, through the "mechanics and laborers"; but the farming Quakers and Germans of the county were sufficient to reverse this city majority where the whole county voted.

intreat, that you will, to the utmost of your power, oppose the changing or altering, in any the least part, our invaluable constitution, under which we have experienced every happiness, and in support of which there is nothing just or reasonable which we would not willingly undertake.

The committee reported a draft of a memorial to Congress on May 24, when it was "referred to further consideration."¹ But in the meantime, to forestall the effect of this memorial to Congress, the Committee of Inspection and Observation of the city met on the same day, and drew up an address² to the Congress, in answer to the Remonstrance "that was or is intended to be sent from the assembly," informing Congress that they had summoned a convention, that the Remonstrance was produced chiefly by persons holding office under the crown, or by "those who have uniformly opposed every measure adopted by the Congress (petitions to the king excepted) or by those who have published testimonies manifestly injurious." This address was laid before Congress on May 25, and it was promptly tabled, though a copy was given to Robert Morris to lay before the Pennsylvania assembly, which he did on May 28.³

Quite as serious a blow to the existing government was struck at this time from another direction. As the creature of the assembly, the Committee of Safety was equally obnoxious to the popular party, who sought to discredit it. Early in May the Pennsylvania galleys in the lower Delaware had an engagement with two English men-of-war. The popular party set up the claim, in which they were gladly supported by the officers of the galleys (who, like the associators, were drawn from the Whigs), that the failure to destroy the English ships was due solely to a shortage of powder, and that the Committee of Safety was thus responsible for the miscarriage. This body at once demanded an investigation from the assembly, but the popular party cared nothing for investigations, and used the

¹ Votes and Proceedings, VI, 729.

² *Pennsylvania Evening Post*, May 25, 1776.

³ Journals of Congress, May 25, 1776; Votes and Proceedings, VI, 730.

charge to its utmost to discredit the executive branch of the government.¹

Such was the condition June 1, 1776. The apparent government of Pennsylvania was a Committee of Safety and the assembly, supported by an undoubted majority of the people, but a majority for the most part pledged to non-resistance and led by a man of hesitating if not weak purpose. Opposed to this government was the "mobility"² of the city of Philadelphia and the Presbyterians of the back counties, with the associators, the galleys and a coming self-constituted convention of unknown potentialities to support them. Nor could the old government claim any superior right, divine or legal, over the new government that was looming up. The assembly, it is true, was the successor of ninety similar assemblies; but it had broken the old charter by disregarding the coordinate branch, the governor, by creating the Committee of Safety as an executive, by discontinuing the oath necessary under the charter for its own legal existence, and by a dozen minor infringements of that source of its own legal power.

Clearly the assembly was not in a position to carry measures with a high hand; and after the momentary vigor infused into it by the successful May elections, this fact seems to have dawned on Dickinson and his followers. After a draft of a memorial to Congress protesting against its resolution of May 15 had been reported, it seems suddenly to have been realized that to antagonize that body would be merely to raise up another and most powerful foe. The idea of a memorial was therefore dropped at this stage and was never again heard of. Concessions were also made to the popular party. A law was reported to do away with all restrictions on naturalization and all oaths of allegiance. The trustees of the loan office were practically directed not to enforce the law requiring yearly payments — naturally a popular measure to the debtor class.³ But the popular party was not to be placated by minor

¹ Votes and Proceedings, VI, 730; Minutes of the Provincial Council, X, 583.

² Diary of James Allan, *Pennsylvania Magazine*, IX, 186.

³ Votes and Proceedings, VI, 728-732.

concessions, and through their friends in the Continental Congress they struck the assembly a second and crushing blow. On June 4 the Congress, in an apparently innocuous resolve¹ concerning the appointment of some brigadier-generals, directed that those from Pennsylvania and Maryland "be appointed by the respective colonies." The sting lay in the omission of the words "assemblies or conventions," hitherto the usual form; and the omission was practically a refusal by Congress any longer to recognize the assembly as the legal government. The effect was instantaneous. The resolutions were laid before the assembly June 5, and that body at once, in a last desperate attempt to retain the reins of power, surrendered to the "independents" by appointing a committee to report new instructions to the delegates in Congress. These were reported, and after debate were on June 8, by a vote of 31 to 12, "approved and ordered to be transcribed." They authorized the colony's delegation

to concur in forming such further compacts between the United Colonies, concluding such treaties with foreign kingdoms and states, and in adopting such other measures as shall be judged necessary . . . reserving to the people of this colony the sole and exclusive right of regulating the internal government.

While the assembly had been framing this document, Richard Henry Lee had moved in the Continental Congress his resolution for independence (June 7), and though action on the resolution had been postponed, the popular party was emboldened by it. The independents in Congress would unquestionably have been satisfied with the removal of the instruction against independence, but the popular party in the colony saw in the demand of the new instructions for local self-government a bar to their schemes of a convention and a new constitution. They therefore, before the new instructions could be adopted by a formal vote, took steps to destroy the assembly. On June 10, when that body met, but nineteen members were present. For a few days a varying number of members met, only to adjourn. The representatives of the popular party had withdrawn, and their num-

¹ Journals of Congress, June 4, 1776.

ber was sufficient to prevent a quorum.¹ After four days, despairing of obtaining a working attendance, the thirty-five members present on June 14 voted (thirteen in the negative) the new instructions² and a severe report on the captains of the galleys. But the popular party was in no mood to allow the assembly to retain even the semblance of power, and on the same day two protests, one from the "board of officers of the five battalions of Philadelphia," and the other from the "committee of privates of the military association," declaring practical independence of the assembly, were laid before the latter. That body, after passing a resolve "that they are earnestly desirous of carrying into execution the resolutions of Congress . . . [but] despair after repeated disappointments of procuring a quorum," adjourned to August, thus yielding the field to the convention.

As a preliminary to the convention there met in Philadelphia on June 8 a "provincial conference of committees," being delegates from each county committee of inspection.³ The committees, except that for Philadelphia county, were made up of the popular party, and naturally the members sent to the conference represented that faction. Promptly after organizing they resolved unanimously that the present government of Pennsylvania was "not competent," and that it was necessary that a convention should be called for the "express purpose" of framing a new one. Their next act was to throw open the

¹ "Accordingly the minority, consisting of Whigs, upon the adjournment in the forenoon, suddenly and secretly quitted the city and every man returned home. When the house was to meet in the afternoon the Tory majority attended, & having waited some time found they had not a house. The messenger was then sent to summon four or five of the members supposed to be at their lodgings in the neighborhood. He returned that they were not at home, and that they had paid off their lodgings. He was then sent to four or five others, but he returned with the same account. Then the members found what conduct the absentees had pursued & with what design. Those who were present were not of a sufficient number to do any act but to adjourn. Their indignation was great. They adjourned to the next day, when being met again & not having the least power they broke up and went home." Reed's Narrative, N. Y. Historical Society Collections for 1878, 273.

² Votes and Proceedings, VI, 730.

³ Journal of the House of Representatives, I, 34.

franchise in favor of their own party by voting that in the coming elections every associator of twenty-one years of age, who had been one year in the colony and had paid or been rated for taxes, should be entitled to vote, at the same time narrowing the franchise for their opponents by resolving "that every person entitled to vote for representatives" should be equally entitled to vote for members of the convention, provided "he should take the following test, or oath of affirmation":

I, —, do declare that I do not hold myself bound to bear allegiance to George the Third, King of Great Britain, *etc.*, and that I will not by any means, directly or indirectly, oppose the establishment of a free government in this province by the convention now to be chosen; nor the measures adopted by the congress against the tyranny to be established in these colonies by the court of Great Britain.

Such an oath practically disfranchised every Quaker in the colony, as well as all who still held allegiance to George III, or to the Penn charter; and deducting these three classes from the conservatives was almost equivalent to disfranchising that party. But, as if this were not sufficiently certain, the conference next voted that all members of the convention, before taking their seats, should forswear allegiance to the English king; swear to promote the most effectual means to establish a government in the province "on the authority of the people alone"; and should declare their belief in the Trinity and in the divine inspiration of the Scriptures.¹ July 8 was set for the election of the delegates, and after some wrangling over the basis of representation the other details were arranged.

The convention having been arranged for, the conference next turned to the present affairs of the colony. They first passed a resolution that the convention when met should choose

¹ "The declaration agreed in conference to be taken by those elected to sit in Convention is highly censured, and as it's represented, and not unjustly, that I strenuously supported it, I am blamed, and was buffeted, and extremely maltreated by sundry of my friends, as I thought, and who, I believed, were really religious persons and loved our Lord Jesus Christ, but now declare that no such belief or confession is necessary in forming the new government." *Diary of Christopher Marshall*, June 28, 1776, 79.

a new Committee of Safety and new delegates to the Continental Congress. They then took up the resolutions of the Congress, which the assembly had declared themselves unable to act upon, and recommended the "committee and associators" to execute them, thus striking another blow at the already toppling Committee of Safety. To discredit the committee still further, the conference interfered in the galley dispute by "recommending" that body not to do what it had just done.¹ Even more important was the action of the conference on June 24, in passing a unanimous declaration of their "willingness to concur in a vote of the Congress declaring the united colonies free and independent states." Then, on June 25, the conference dissolved.

In spite of the new instructions from both the assembly and the conference, the Pennsylvania delegates in Congress were still opposed to independence. In the original vote, on June 8, Dickinson, Morris, Humphreys, Willing and Wilson voted in the negative, and Franklin and Morton in favor. On the second vote, July 1, Pennsylvania was still in the negative. But other colonies which had hitherto stood with Pennsylvania were fast changing sides, leaving her delegates unsupported. On July 2, therefore, when the resolution was again moved, the delegation gave way. Dickinson and Morris absented themselves; Wilson changed his vote, and with Franklin and Morton outvoted Humphreys and Willing. The independents in Congress, by destroying the government of Pennsylvania, had so weakened the power of her ablest leaders as to compel them to assent or submit to independence. But in so doing they had destroyed all unanimity in the colony, and all chance for effective support from any established government in one of the most important of the provinces, at a moment when every soldier and every resource was most needed. Unless the convention could organize a new government promptly and bring order out of chaos, the vote of the colony for independence had been dearly purchased.

On July 8 the elections for the members of the convention

¹ Minutes of the Provincial Council, IX, 615.

were held. In no case did the conservatives attempt either to vote or to stand for membership, and thus the nominees of the popular party, most of whom had been agreed upon at previous meetings, "were elected very quietly."¹ Seven days later, on July 15, the convention met and organized, with Franklin as president.²

Far from proceeding at once to the framing of a constitution, the convention, though called for the "express purpose," first set itself to regulating the affairs of the colony, as if both an executive and legislative body. After taking the oath of office, the convention began to give orders concerning munitions of war, the movements of associators, and finally for a general disarmament of non-associators. Two days after its first assembling it went even further, by appointing a committee to draw an ordinance for the latter purpose, and this was quickly followed by the appointment of similar committees to frame ordinances concerning treason, prisoners, counterfeiting, courts and other matters. Laws limiting freedom of speech and of the press, making state and continental currency a legal tender, regulating the prices of goods, and providing for a general jail delivery were quickly enacted. Determined that nothing of the old government should remain, a new and radical Council of Safety was appointed and a new delegation to Congress named, though the term of the delegation then holding office did not expire for over three months. The new delegation took their seats without opposition, July 20, and on the 22d the new Council of Safety met. The last vestige of the old government, except the adjourned and scattered assembly and a governor disregarded by all, was destroyed. The conservatives offered no opposition, and the popular party seemed to have grasped all the governmental powers of the community.

These manifold occupations naturally delayed the drafting of a new constitution, if indeed the convention did not purposely prolong the work so as to retain the powers it had grasped.³

¹ Diary of Christopher Marshall, 83.

² Journal of the House of Representatives, I, 49.

³ Diary of James Allen. *Pennsylvania Magazine*, IX, 188.

A new constitution would mean a new election, and the extremists very well knew that this would mean a defeat for their party. So greatly did they dread an appeal to the voters, that they even adopted a resolution continuing the old Committee of Inspection and Observation for the City of Philadelphia in office beyond the annual election day, for fear of defeat in what had hitherto been the stronghold of the popular party. It was openly charged that the convention had no intention of adjourning, but having obtained a firm seat in the saddle, was resolved to maintain its position.

Events, however, were not working favorably for such a purpose. The movements of the British forces at New York caused the need of the Pennsylvania associators at that place; and the convention, being the government *de facto*, was called upon by Congress to order them there. Such an order was naturally unpopular; for it was the middle of the farming season, and calling the men from the fields caused grumbling in the force which was the mainstay of the popular party; while at the same time, by their departure, the conservatives were left everywhere in relatively greater preponderance, and were freed from the restraint which resulted from the presence of troops. Refusals to obey the orders of the convention and the Council of Safety began to multiply. Persons declined tenders of paper money, and sold goods at their own prices. Desertions from the associators became numerous. Some companies and individuals refused to march to Washington's assistance, on the ground that they would not bear the burdens of service while the non-associators remained tranquilly at home. To meet this reasoning, an ordinance was passed taxing every non-associator twenty shillings per month, and four shillings in the pound on his ratables. But before this became a law the American forces had been defeated on Long Island, and New York City was in the hands of the British. Those who chose, therefore, declined to pay these taxes. The officers of the galleys refused to obey the commodore whom the Council of Safety had appointed; and though the council published an address upholding the commodore and blaming the "dangerous spirit of licentiousness"

displayed in the mutiny, it nevertheless had to give way and name a new commander. A serious riot took place in Philadelphia. Three battalions of the associators mutinied and returned to the city. Others refused to embody and march. The opposers of independence and the convention spoke openly against both. So marked was the reaction, that the old assembly, which had tried to meet in August according to its adjournment but had failed to obtain a quorum, now (September 26) again gathered, and though still without a quorum proceeded to transact business. It declared that the convention possessed no right to pass ordinances, and recommended a refusal to obey them. Further, a year's salary was voted to the governor, thus indicating an intention to keep in existence all the machinery of the old government.¹

These various events decisively indicated to the convention that it could no longer remain the government *de facto* of the state, and it therefore hastened to frame a constitution. Had it possessed a membership open to concession and compromise, there seems little doubt that a frame of government could have been adopted that would have united the people ; for there is good evidence that the conservatives had, in July, acquiesced in the movement for a new government, or rather that the party had split, and that, while many of the Quakers still clung to the old charter, the larger portion of the party, under the leadership of Dickinson, Reed, Morris and other moderate Whigs, had become convinced that the former government was ended, and were only seeking to obtain the best possible in its stead. In the middle of July Dickinson himself printed an *Essay of a Frame of Government for Pennsylvania*, and when the convention ordered its draft of a Bill of Rights printed "for consideration," a copy was given to Dickinson, and certain alterations that he made in it were accepted by the convention.

The controlling spirits of the convention, however, were too extreme and radical to understand that democratic government must consist of compromises. They saw in the opportunity to frame a new constitution a chance to retain control in their

¹ Votes and Proceedings, VI, 743.

own hands, and in an endeavor to realize this they produced a most interesting result. That the government would be democratic was assured not merely by the extreme democracy of the old charter, but also by the *personnel* of the convention. But no constitution yet framed had ever made such great strides towards popular government. The one-chamber legislature and the annual election were hardly the work of the convention, for they were merely transferred from the Penn charter; having yielded such admirable results in the past, it is not strange that they were grafted into the new instrument. But great departures were made in other respects. All the freemen were constituted as a militia, with the right to elect their own officers. The qualifications for the electoral franchise were such as practically to establish manhood suffrage. Sessions of the assembly were made public, and its proceedings ordered printed weekly. All bills were to be "printed for the consideration of the people" before they went to a third reading, and, except on "occasion of a sudden necessity," no bill was to become law till the session of the assembly after that in which it originated, thus practically establishing a referendum. Apportionment of representation was made dependent on "taxable inhabitants." The council was elective by the people, as was much of the judiciary. Judges' commissions were limited to seven years. Imprisonment for debt was abolished. Citizenship was granted on one year's residence. Public schools were ordered established. A septennial council of censors was created, with power to examine all infringements of the constitution and to call a convention to revise it. Only by a study of the other constitutions adopted at that time can the radical character of these provisions be properly understood.

How far the constitution framed by the convention would have met with opposition on its own merits cannot be known. Although the vote of the convention "to pass and confirm" was declared to have been unanimous, there is conclusive evidence to show that a dissenting party existed; and if the statement of the journal is correct, the explanation must

be that the dissentients withdrew before the final vote. But the opposition was caused not so much by the constitution itself, as by the endeavor of the extremists in the convention to prevent a fair election by requiring, as a preliminary to voting, not merely an oath of allegiance, but also an oath embodying a pledge not to do, "directly or indirectly, . . . any acts or thing prejudicial or injurious to the constitution or government . . . as established by the convention." By this requirement, with a like oath from all officers before taking office, the extremists designed to disfranchise and disqualify for office the larger part of their opponents.

On this question of the oaths, then, on certain clauses in the constitution, and on the ordinance to tax non-associators, the convention was divided. The extreme party carried out their policy, and the more moderate section, after resisting, withdrew before the final vote. When, therefore, the convention adopted the constitution, and adjourned, September 28, 1776, a marked shifting of political lines occurred by a coalition of the dissentients with the conservative party. The extremists, already hitherto in a minority, were by this change reduced to apparent insignificance as a political force. Arrayed against them were all the Quakers, the Germans, the moderates, and even a large part of the associators, led by Dickinson, Mifflin and Morris of the old party, and by Bayard and McKean, who had hitherto been most active with the extremists. The test oath was therefore the only hope of the popular party, or "constitutionalists," as they were promptly named, in the approaching election for an assembly under the new constitution.

The constitution was greeted with an almost universal protest. The papers were filled with attacks upon it, and resolutions opposing it were adopted in many public meetings.¹ The

¹ "Past six, went to Philosophical Hall, being called there by invitation in printed tickets, where met a large number of respectable citizens in order to consider of a mode to set aside sundry improper and unconstitutional rules laid down by the late Convention, in what they call their Plan or Frame of Government, where after sundry deliberate proposals some amendments were agreed to, nemine c. d. and ordered immediately to be printed with the reasons that induced this

most important of these meetings was held at Philadelphia, October 21. On this occasion fifteen hundred people were estimated to have been present, and after a discussion by speakers both for and against the new government, the assemblage adopted by a "large majority" a series of resolutions which we may take to represent the wishes of the Whig opposers of the constitution. These recognized the coming election as legal, but declared that no oaths must be administered either to electors or elected, that no councilors should be chosen, that the assembly elected must have full power to amend the constitution, as well as to pass such ordinances as occasion required, and finally that the constitution so amended should be submitted to the vote of the people. To carry out these resolves committees were appointed by the meeting to secure support for them in every county of the state.

The election was held November 5. Unquestionably the Quakers refused to vote, and a large class of conservatives seem to have done the same. The contest was therefore one between the constitutionalists and the moderate Whigs. Owing to this shifting of party lines, the exact results are difficult to obtain. Of the seventy-two assemblymen elected only twenty-five had been members of the convention, and some of these had unquestionably become opposers of the constitution. From some counties not an extremist was elected. In Philadelphia all the anti-constitution nominees were elected by majorities of over one hundred in total votes of about seven hundred. On

company to make such alterations, to be published immediately for the perusal and approbation of the whole State at large, and that a general town meeting to be held at the State House in this City, next Monday afternoon, the proceedings of which to be printed and immediately transmitted to all the Counties in the State. The whole of the meeting was conducted with great order and solemnity, and broke up past ten, in great union. Thence to the State House Yard, where it's thought about fifteen hundred people assembled, in order to deliberate on the change of sundry matters contained in the Form of Government, settled in the late Convention. Col. Bayard seated in the chair, [we] proceeded to business, which was conducted with prudence and decency till dark; then adjourned till nine tomorrow morning. Chief speakers against [the] Convention were Col. McKean and Col. Dickinson; for the Convention, James Cannon, Timothy Matlack, Dr. Young and Col. Smith of York County." *Diary of Christopher Marshall, October 21, 1776-98.*

the question "No Councilors," in which the personal element could play no part, the vote stood 406 to 211. Equally sweeping was the victory in Philadelphia county. Had the Quakers and ultra-conservatives voted, it is to be questioned if the constitutionalists could have carried a single nominee east of the Susquehanna River.¹

The effect of the election was quickly shown in the call for a public meeting in Philadelphia on November 8 for the purpose of instructing the representatives of the city. The instructions adopted directed them to "prevent the immediate execution" of a constitution "which destroys the great objects of equal liberty and free government," and to secure its amendment by dividing the legislative department, giving judges a tenure during good behavior, abolishing the council of censors, and doing away with the obnoxious test oaths. When, therefore, the assembly gathered for the session to begin November 28, Dickinson, who had been chosen a member, submitted to the opposition an informal proposition for a program:

We will consent to the choice of a speaker, to sit with the other members, and to pass such acts as the emergency of public affairs may require, provided that the other members will agree to call a free convention for a full and fair representation of the freemen of Pennsylvania, to meet on or before the —— day of January next for the purpose of revising the constitution formed by the late con-

¹ "Went past nine to the State House, being appointed one of the Judges to superintend and conduct the Election, as is usual. Continued there till near two next morning, where all matters in general were conducted with great harmony and concord in the house; two or three small buffetings I heard about the door in the street, but soon went over. Upon casting up the votes, they turned out thus: For Joseph Parker, 682; for George Clymer, 413; for Robert Morris, 410; for Samuel Morris, Jr., 407; for John Bayard, 397; for Michael Schubart, 393. These six were elected members. Those following had votes each, *viz.*, David Rittenhouse, 278; Timothy Matlack, 268; Jonathan B. Smith, 273; Jacob Schriener, 269; Thomas Wharton, Jr., 268; Joseph Parker, as above, he being chosen by both parties. Votes 'For No Counsellors,' 406; 'For Counsellors,' 211."

"The members chosen for [the] County of Philadelphia yesterday were Robert Know, 523; John Dickinson, 419; George Gray, 419; T. Potts, 407; Isaac Hughs, 282; Frederick Antis, 275. 'For No Counsellors,' 370; 'For Counsellors,' 133." *Diary of Christopher Marshall*, November 5 and 6, 1776, 102.

vention, and making such alterations and amendments therein as shall by them be thought proper, and making such ordinances as the circumstances of affairs may render necessary; provided, also, that no part of the said constitution be carried into execution by this assembly, and provided, that this assembly shall be dissolved before the day to be appointed for the meeting of the convention.

The outcome of this proposition may be told in Dickinson's own words :

This proposal was rejected. The behavior of some persons on that day, and the disagreeable circumstance of entering into contests scarcely to be avoided with gentlemen I had for a long time esteemed, added to what had passed before, induced me to decline any further opposition to the constitution, and I retired from the assembly.¹

Dickinson's withdrawal was imitated by others. The assembly had barely organized when it found itself without a quorum.² The moderate Whigs had taken a leaf from the book of the extremists, and were using the same means to end the present assembly that had been formerly employed to end that under the old charter. While the British under Howe were sweeping across New Jersey, with Philadelphia as their evident goal, the assembly met day after day only to remain helpless and inactive.³ Finally the paralysis of all government in the state compelled the Continental Congress to interfere. The city was declared under martial law, and General Putnam was put in command. Word also was sent to the assembly that "if they did not agree to act," the Continental Congress "would take the government of Pennsylvania into their hands."⁴ This marked the abandonment for the time of opposition to the constitution. Some absenting members returned to the assembly; others resigned their seats, and their places were filled at special elections, at which councilors were also appointed. Early in March, 1777, the government completed its organization. Yet it was never recognized by the larger part of the

¹ Dickinson's Vindication, *Freeman's Journal*, Jan. 8, 1783.

² *Journal of the House of Representatives*, I, 100.

³ "Great pains were taken to get the militia out, but in vain; but few were prevailed on to turn out." *Examination of Joseph Galloway*, 15.

⁴ *Diary of James Allen*, *Pennsylvania Magazine*, IX, 189.

people, though the leaders of the opposition, from public spirit, laid aside their personal dislike and later in the war held office under it. But opposition never ceased till a new convention was voted in 1789, and the struggles of the two parties during the intervening period rent the people into bitterly hostile factions and paralyzed all public spirit and exertions.

Thus it was that national independence and a democratic constitution were voted in the Keystone State. To accomplish their purposes the New England and Virginia delegates struck down in turn Galloway and Dickinson,¹ the ablest men of the state (as later they tried to strike down Franklin and Morris), and aided to power a set of men of far less reputation and ability. The price paid is hard to compute. The division in the state had far-reaching results. It prevented Washington from receiving the full aid of the most important state of the Union at Long Island, at White Plains and in the campaign of the Jerseys. It alienated the richest city and the best grain and beef region from the American cause. It made Tories of many, and rendered Howe's eventual occupation of Philadelphia almost the occupation of a friendly country. It so weakened the government of Pennsylvania that for months, at the most critical period of the war, it not only was powerless to aid the continental side, but had actually to rely on the Congress for support. It created a lawlessness in the people that led to riots and confusion equaled in no other state, to the mutiny of the Pennsylvania line, the driving of Congress from Philadelphia, and the later civil insurrections. Finally, it built up a powerful "popularist" party, opposed to commerce, to sound finance and to federal union, that for many years hung like a dead weight on all attempts tending to advance those measures.

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¹ For evidence that the New Englanders were not unconscious of the harm they were doing the American cause, see John Adams to Abigail Adams, July 10, 1776. *Familiar Letters*, 19.

THE TENNIS COURT OATH.¹

PROBABLY in no period of history is the temptation to exaggerate the importance of dramatic events by a false isolation so great as in the early years of the French Revolution. This tendency renders the reconstruction or reinterpretation of the history of this epoch especially necessary. Until Professor H. Morse Stephens published his excellent book, the English-reading public had relied pretty exclusively upon Carlyle's picture of events. Carlyle's account, notwithstanding its poetic brilliancy, is in one sense quite conventional. With all his broadmindedness, he makes little effort to re-state events in new relations or from any other than the traditional standpoint. The Tennis Court oath is to him, as to most other historians, a picturesque incident associated with a court intrigue. No attempt has been made, as far as I am aware, to assign to this event its proper place in the great and irresistible current of advance. It is, after all, but recently that writers of history have recognized as their chief task the painstaking investigation of the often obscure causal relations of events—the tracing of gradual and inevitable development where phenomena have previously been treated only as spasmodic and erratic. It is with this in view that I shall try to sketch out the history of the Tennis Court oath of June 20, 1789, by which the deputies of the French people bound themselves to give France a constitution, and shall attempt to show that the incident was not the unpremeditated outcome of an invasion of carpenters, "hammering, sawing and operative screeching," but that the events of June 20 constituted in reality only a slight although politically important advance beyond the state of affairs on June 19.

During the months of May and June a momentous constitu-

¹ This paper is based upon one prepared for the meeting of the American Historical Association, December, 1894.

tional change had been taking place in France. The old feudal assembly of the three orders, reassembled after an interval of one hundred and seventy-five years, was found, in spite of the studiously antiquated dress of its members, to have undergone a significant change since last it met. No royal edict could re-create the spirit of earlier centuries. The inevitable metamorphosis into a modern representative body took place during the succeeding weeks, notwithstanding the opposition of the conservative elements. It was finally decided by the court to suspend the sessions of the three orders, and this, as appeared to the third estate, with disrespectful if not suspicious abruptness. The pretext for the prorogation was that, as the king was to address the estates a day or two later, the spacious general meeting-place of the orders, which the representatives of the third estate had utilized since May 5, must be prepared for the royal session.

On finding the place of assembly occupied by the carpenters, the representatives of the third estate gathered in the Tennis Court of Versailles and adopted the following resolution:

The National Assembly, regarding itself as called upon to establish the constitution of the kingdom, effect a regeneration of the state (*l'ordre public*) and maintain the true principles of monarchy, may not be prevented from continuing its deliberations in whatever place it may be forced to take up its sittings. Maintaining further, that wherever its members are assembled, there is the National Assembly, the assembly decrees that all its members shall immediately take a solemn oath never to separate and to come together wherever circumstances may dictate until the constitution of the kingdom shall be established and placed upon a firm foundation.¹

The importance of this resolution lies in the fact that it was the first distinct and formal assertion of the assembly's mission. A resolution had been passed three days before (June 17) by which the deputies of the third estate had assumed the title of "National Assembly." The deputies had, moreover, taken an oath upon this same seventeenth of June

¹ *Histoire Parlementaire*, vol. ii, p. 3.

very like the Tennis Court oath itself : "We swear and pledge ourselves to fulfill with zeal and fidelity the duties which devolve upon us." "This oath," we are told, "taken by six hundred members, surrounded by four thousand spectators (the public having gathered in crowds at this session), excited the greatest emotion, and constituted a most imposing spectacle."¹ Apparently all that is novel in the Tennis Court oath is the clear enunciation that the establishment of the constitution is the essential task of the assembly.

No adequate account appears to have been given of the development of this idea of a constitution. That it was not new on the morning of June 20, 1789, is obvious. The unanimous recognition on the part of the deputies that the true object of the assembly was the establishment of a constitution, is quite sufficient to prove that the public mind was ripe for this declaration. It is my purpose to indicate in a brief and general way the steps by which the French nation attained to a clear conviction that the salvation of the country depended upon the distinct formulation of the principles of government—a conviction which received its first official announcement in the Tennis Court oath.

The motives advanced by the king and ministers for convoking the Estates General had been but vaguely conceived and therefore but vaguely indicated in the Letter of Summons, January 24, 1789.² "We have," the document relates, "need of the counsel of our faithful subjects to aid us in overcoming all the difficulties in which we are involved respecting the state of our finances, and to establish according to our wishes a constant and invariable order in the various parts of the government which affect the happiness of our subjects and the prosperity of our kingdom." The phrase "fixed and constant order in all parts of the administration" occurs three times in this brief document as one of the great objects which the Estates General in conjunction with the king are expected to accomplish. Necker's report to the king,

¹ *Histoire Parlementaire*, vol. 1, p. 471.

² *Archives Parlementaires*, vol. i, pp. 543, 544.

issued a month previous to the actual summoning of the estates, although claiming to reflect the inmost purposes of the monarch, really does little to define the vague terms used in the letter of convocation itself. Necker says nothing of a constitution, but seems to take for granted that the Estates General are to be regularly and periodically convened in the future, while the worst abuses are to be done away with and the administration improved.¹ No farther program was furnished by the government until the king submitted an elaborate and interesting plan of reform in thirty-five articles² at the royal session, three days after the Tennis Court oath.

The ideas of reform vaguely advanced by the government had taken a much more definite shape, however, in the minds of the leading spirits in the nation at large, and had developed into the matured conception of a constitution some time before the assembling of the Estates General. A remarkable forecast of the ideas which later became the basis of constitutional revolution is to be found in the *remontrances* of the *parlements* issued from time to time during the eighteenth century. These superior courts of France had formulated the theory of a constitution long before the revolution, and had, moreover, taken great pains to familiarize the public with the idea.³

Considering the inherently close connection between the legislative and the judicial functions of government, it is not strange that a proud and self-conscious body like the *parlement* of Paris should have been inclined to define its duties broadly and extend its influence so as to exercise a certain control over the formation of the law. This tendency was rendered

¹ Archives Parlementaires, vol. i, pp. 489 ff., especially pp. 496-7.

² Histoire Parlementaire, vol. ii, pp. 16 ff.

³ The study of this interesting but neglected phase of the constitutional history of France will be greatly facilitated by the publication of the "Remonstrances du Parlement de Paris au XVIII^e Siècle," which are being excellently edited by M. Jules Flammermont in the great series of Documents Inédits. The first volume only of this collection has appeared (1888), covering the period 1715-1753. The editor furnishes a valuable introduction, in which the position and pretensions of the court are carefully discussed. For the later period of the *parlements'* existence the present writer has, through the courtesy of the librarian, been enabled to utilize a number of contemporaneous editions of the Remonstrances preserved in the White Library of Cornell University.

almost inevitable by a custom which had long existed of permitting the courts to protest against, and demand a reconsideration of, kingly edicts when presented to them for registration. This anomalous right of participation in legislation was stoutly defended by the *parlement*, the arguments advanced being based not only upon precedent, but upon justice and expediency as well. The attempts of the king and his ministers to force the court to register edicts against its will produced serious crises. On these occasions the despotic character of the French monarchy and the problem of the exact nature of the legislative act¹ were brought prominently before the nation.

In order to support their contingent opposition to the wishes of the king, whom they recognized freely enough as the supreme law-giver, the courts put forward the theory of a constitution. They assume the guardianship of the "*lois fondamentales*" of the monarchy. It devolves upon them, they claim, to maintain the constitution of the kingdom and to see that no fundamental maxims are violated. This constitution was perhaps ill-defined, and was comprised in no accepted written code; nevertheless, the courts very properly pointed out that it was only by continuing to observe certain venerable usages that France could be said to enjoy a regular legal government at all. As they once bluntly told Louis XV: "Adulation itself would not dare to assert that in every case anything that the king wills becomes forthwith a law of the monarchy."² The *parlements* appear to have been conscious, however, that their claims rested at best upon a somewhat precarious foundation. They never venture to give a complete or even extended enumeration of the "fundamental laws" of the monarchy. For the vagueness of their pretensions they seek to compensate by solemn reiteration.³

¹ "La solennité sacramentelle de la législation françoise," as it is called by the Parlement of Paris. Remonstrances of June 18, 1763, p. 14.

² Remonstrance of Parl. of Brittany, July, 1771.

³ "Le Parlement sent bien la fragilité des droits qu'il réclame et il deguise la faiblesse de ses pretentions sous des affirmations vagues qu'il développe dans un langage solennel." Flammermont, *op. cit.*, I, xxxi.

Notwithstanding the obvious want of definiteness in the theories of the *parlements*, there is much in the widely circulated *remontrances*, beginning with that of May, 1716, which could not but leave a deep impression upon a public that was becoming more and more conscious of the abuses and dangers of absolutism. The successive conflicts between the superior courts and the king's ministers, important as they were in cultivating a spirit of general discontent, cannot be considered here.¹ We must confine ourselves to the stimulus given by the *parlements* to the growing demands in the eighteenth century for a limitation of the king's powers.

The following statement of the *parlement's* case, made some seventy years before the Tennis Court oath, contains a summary of the claims which are separately developed at greater length in the various manifestoes of that body:

While we recognize, Sire, that you alone are lord and master and the sole lawgiver, and that there are laws which varying times, the needs of your people, the maintenance of order and the administration of your kingdom may oblige you to change, substituting new ones according to the forms always observed in this state, we nevertheless believe it to be our duty to call to your attention the existence of laws as old as the monarchy, which are permanent and invariable, the guardianship of which was committed to you along with the crown itself. . . . It is by reason of the permanence of such laws that we have you as lord and master. It is this permanence which leads us to hope that the crown, having rested upon your head during a long, just and glorious reign, will pass to your posterity for all time to come.

In recent times [the *parlement* adds] it has been clearly shown how much France owes to the maintenance of these original laws of the state, and how important it is in the service of your Majesty that your *parlement*, which is responsible to you and to the nation for their exact observation, should assiduously guard against any attack upon them.²

¹ The significance of these struggles is excellently explained by Rocquain in his admirable work, *Esprit Révolutionnaire avant la Révolution*.

² *Itératives Remontrances sur la Refonte des Monnaies*, July 26, 1718. Flammermont's collection, pp. 88 ff., especially pp. 94, 95.

Even Louis XIV, the *parlement* claims, regarded that body as "the real guardian of the fundamental laws of the kingdom, and even the most absolute of the kings had accepted the registration by the *parlement* as a necessary condition for the enactment of a law."¹

The superior tribunals, especially the *parlement* of Paris, are thus placed upon the same footing as the monarch himself. They both exist in virtue of the same fundamental or constitutional laws. Thus, "la constitution la plus essentielle et la plus sacrée de la monarchie,"² as conceived by the magistrates, provided not only for a king with "fortunate inabilities,"³ but for tribunals which had a right to cooperate in legislation.⁴ Both owed their existence to the same imprescriptible law by which the kings themselves were kings.⁵

The so-called "*Grandes Remontrances*" of 1753 discuss at length the relation of the will of the sovereign to the law of

¹ *Itératives Remontrances sur la Refonte des Monnaies*, pp. 95, 96.

² *Remontrance* of June 18, 1763, p. 16.

³ "Bienheureuse impuissance," a constantly recurring quotation from the "*Droits de la Reine sur divers États de la Monarchie de l'Espagne*," supposed to have been inspired by Louis XIV.

⁴ "Que toute administration dans l'état est fondée sur des Loix, et qu'il n'en est aucune sans un enregistrement libre, précédé de vérification et d'examen, que cette vérification est nécessaire pour donner à toutes les Loix ce caractère d'authenticité, auquel les peuples reconnoissent l'autorité qui doit les conduire," etc. *Extrait des registres du Parlement*, January 2, 1760, p. 13. See also *Remontrance* of June 18, 1763, *passim*.

⁵ The *Parlement* asserts, in a remonstrance of June 18, 1763: "Que de même que le souverain est l'auteur et le protecteur des Loix, de même les Loix sont la base et les garants de l'autorité du Souverain, et que toute atteinte portée aux Loix retombe plus ou moins directement sur le Souverain lui-même. Que méconnoître l'existence ou la force irréfutable de Loix immuables par leur nature, constitutives de l'économie de l'état, ce seroit ébranler la solidité du Trône même. Que suivant les expressions du Premier Président de son Parlement, parlant à l'un des augustes Prédecesseurs dudit Seigneur Roi, 'les Loix de l'état et du Royaume ne peuvent être violées sans révoquer en doute la Puissance même et la Souveraineté dudit Seigneur Roi. Que nous avons deux sortes de loix; les unes sont les Ordonnances des Rois, qui se peuvent changer selon la diversité des tems et des affaires, les autres sont les Ordonnances du Royaume, qui sont inviolables, et par lesquelles ledit Seigneur Roi est monté au Trône royal, et cette Couronne a été conservée par ses prédecesseurs jusqu'à lui.'" This last quotation the court derived from a speech made by Harlai before the king, June 15, 1586.

the land. The subjection of the kingly will to law is clearly set forth, and the theory is supported by a variety of somewhat startling quotations culled from the political literature of Louis XIV's reign.¹ This remonstrance of 1753, dealing with the refusal of the sacraments, closes the long struggle growing out of the bull *Unigenitus*. The succeeding conflicts between *parlement* and ministry turn on other matters. The popularity-loving magistrates, susceptible to the spirit of the times, learn to give a democratic or at least popular tone to their declarations. The terms nation, people and *citoyen* occur more and more frequently in the expostulations with the king. We can easily perceive the growing antagonism of the nation towards an unlimited or ill defined royal power. The clearest and most mature statement of the theory of a constitution which I have found occurs in an obscure remonstrance addressed to the king by the *parlement* of Brittany, dated July, 1771:

There is an essential difference between the transitory regulations which vary with the times, and the fundamental laws upon which the constitution of the monarchy rests. In respect to the former [that is, the transitory regulations], it is the duty of the courts to influence and enlighten the ruling power (*l'autorité*), although their opinions must, in the last instance, yield to the decisions of your wisdom, since it appertains to you alone to regulate everything relating to the administration. To administer the state is not, however, to change its constitution. . . . It is, therefore, most indispensable to distinguish or to except the cases where the right of expostulation suffices to enlighten the ruling power in an administration which, in spite of its wide scope, still has its limits, and those cases where the happy inability [of the monarch] to overstep the bounds established by the constitution implies the power necessary legally to oppose what an arbitrary will cannot and may not do.

While this is obviously an *ex parte* argument with a view to justifying the pretensions of the courts, it is a remarkable approximation to the later ideas of a constitution as distinguished from current statutory legislation. Not only was the word constitution familiar to the thoughtful Frenchman many

¹ Flammermont, I, 521 ff.

years before the Revolution, but the idea which underlies the modern conception of a constitutional government was ready at hand.

That the superior courts represented the nation since the disappearance of the Estates General, was perhaps the basis of the claim which the *parlement* ventured to make upon the sympathy of the public.¹ It was the *parlement* of Paris which, July 16, 1787, requested that the Estates General be again convoked, "considérant que la Nation représentée par les états-généraux est seule en droit d'octroyer au Roi les subsides nécessaires."² This demand, passed by a strange coalition of radicals and conservatives who held opposite views of the meaning of their action, was the beginning of the end. After a brief period of popularity the *parlements* disappear forever, with a last dignified protest in which they sadly lament the outcome of a movement which they had themselves so materially hastened.³

There is a natural temptation to attribute to our own institutions a very considerable influence upon the growth of the idea of a constitution in France. Apparently the earliest collection of our state constitutions ever made was destined for French readers.⁴ These documents attracted the attention of thoughtful Frenchmen, and we have the comments of Turgot,⁵ Mably,⁶ and, later, the extensive work of Jefferson's friend,

¹ "Ce peuple avoit autrefois la consolation de présenter ses doléances aux Rois vos prédécesseurs ; mais depuis un siècle et un demi les états n'ont point été convoqués. Jusqu'à ce jour au moins la réclamation des Cours suppléoit à celle des états, quoiqu'imparfaitement." Remontrances de la Cour des Aides, February 18, 1771. See also the famous remonstrance of the same court issued in 1775.

² Arrête du 30 Juillet, 1787.

³ The last remonstrance of the Parlement of Paris is printed by Mortimer-Ternaux. *Histoire de la Terreur*, I, pp. 306, 307. See Pasquier's *Memoirs* (American edition), I, 70-74, and 98 ff.

⁴ *Recueil des loix constitutives des colonies angloises confédérées sous la dénomination d'États-Unis de l'Amérique septentrionale*, traduit de l'anglois. A Philadelphie et se vend à Paris, chez Cellot et Jombert, 1778. Library of Penn. Hist. Soc.

⁵ Adams wrote his "Defence" in answer to Turgot's strictures, which may be found in the latter's works.

⁶ *Observations sur le gouvernement et les loix des États-Unis de l'Amérique*, 1st ed., 1784.

Mazzei,¹ who is said to have been aided by Condorcet. The bills of rights prefacing a number of our early state constitutions are constantly referred to in the debates upon the Declaration of the Rights of Man, August, 1789. The experience of the United States may well have added somewhat to the precision and vigor of an already well developed movement towards constitutional reform ; more weight than this cannot, I think, be ascribed to foreign example.²

The French, long conscious of the abuses of their system of government, and anxious to insure their liberties by limiting the prerogatives of their monarch, turned their minds naturally and inevitably to a species of written guarantee which should give definiteness to the chief fundamental laws of the state. The very insistence placed upon the declaration of the rights of man showed that the people had in view a charter in the English sense of the word rather than an elaborately wrought out constitution, like that of 1791. "No one denies now," Mirabeau once remarked with characteristic insight,³ "that the French nation was prepared for the revolution which has just taken place rather through a consciousness of its ills and the faults of its government than by the general advance of knowledge. Every one was conscious of what should be destroyed; no one knew what should be established." The proof of this is found in the pamphlets of the time, but especially in the great collection of *cahiers*.

As was most natural, the determination of the king to summon the Estates General called forth a great number of pamphlets, especially in the latter half of the year 1788. These corresponded in function to the modern newspaper, which very quickly developed from them. While they dealt very largely with the question of the number of representatives

¹ Recherches Historiques et Politiques sur les États-Unis de l'Amérique septentrionale, par un Citoyen de Virginie. Paris, 1788, 4 vols. See Sabin., Bib. Am., No. 47,207.

² Mr. Rosenthal has collected a great deal upon this subject in his careful work, America and France: Influence of the United States on France in the 18th Century (1882).

³ Twenty-third note to the court in the correspondence with Lamarck.

and with the method of voting in the assembly, some took up the work which the Estates General had before it. That of Siéyès is well known, and its author occupied an authoritative position in the assembly from the first. A less-known pamphlet, published anonymously, but attributed with good reason to Rabaut St. Étienne, the most radical perhaps of the more influential speakers in the assembly before June 20, is analyzed in the Introduction to the *Moniteur*.¹ This brochure, published a year before the Tennis Court oath, sets forth the necessity of establishing a constitution.

So long as the changing and arbitrary form of your administration continues to exist [the author urges], so long will the ministers to whom your interests are temporarily confided be in a position to overturn the established order, modify or abrogate the laws and regulations made by their predecessors, while all your efforts to correct the abuses and better your situation will be futile and without permanent results.

In determining the principles of a good constitution, while the author speaks of those of Switzerland and of the United States, he evidently recognizes that England after all furnishes the most feasible model. The constitution ought, he holds, to provide for two houses of legislation, a separation of the powers of government, ministerial responsibility, security of person and property, liberty of the press, *etc.*,—a complete program, extracted in a measure no doubt from Montesquieu. So far, however, as I have examined the pamphlets of the times,—and a considerable collection is available in the Library of the Pennsylvania Historical Society,—the one just described seems to be exceptional. As Sorel says: “The French were much more anxious for civil than for political liberty.” We find a great deal more discussion of financial oppression and of the existing social and economic abuses than of a proposed political or constitutional re-organization.

The same tendency is apparent in the *cahiers*. Still these indicate a very general if not practically universal desire that

¹ A la Nation Française, sur les Vices de son Gouvernement, sur la Nécessité d'établir une Constitution et sur la Composition des États-Généraux. Archives Parlementaires, vol. i, pp. 572-3.

the despotic government of the Bourbons should cease. To take an example at random from one of the *cahiers* of the clergy, we find, article 1, this statement: "The fundamental [*constitutives*] laws of the nation ought not to be based upon doubtful and obscure traditions, but established upon a solid foundation, to wit, justice and the good of the people." Nothing is to be done in the assembly of the Estates General, the *cahier* declares, "until the rights of the nation are solemnly recognized and determined. A charter containing these shall be drawn up, in which they shall be formally and irrevocably inscribed."¹ This is characteristically vague, and, taking the orders throughout, represents the average minimum demand. Every one seemed to feel that the desired civil rights and freedom could only be secured by establishing so much of a constitution as would insure the periodic meetings of the Estates General. This participation of the nation in the exercise of legislative power would prevent oppression, if the rights of the individual were once defined, and solemnly and irrevocably reduced to writing. Such a course was not regarded as implying any radical innovations. In fact, in the case of some of the *cahiers* of the *noblesse* the desire appears to have been to secure their own special privileges, which they regarded as fundamental laws. These, if reduced to writing, were, it was argued, not so likely to be questioned in the future as they had been of recent years. Taine's assertion² that the nobility in general held with Montesquieu that France had a constitution, is not, however, borne out by the *cahiers*,³ although there are some instances which give countenance to this view.

The general desire for some security for the maintenance of the fundamental rights of person and property takes a more definite form in certain urban *cahiers*, for example in that of the *sénéchaussée* of Lyons :

Since arbitrary power has been the source of all the evils which afflict the state, our first desire is the establishment of a really

¹ *Sénéchaussée de Mans*, Archives Parl., III, 637.

² Cf. Siéyès, *Ancien Régime*, p. 422.

³ This is pointed out by Champion in his introduction to Siéyès' pamphlet, ix, note.

national constitution, which shall define the rights of all and provide the laws to maintain them. Consequently our representatives shall request the Estates General to decree and His Majesty to sanction a strictly constitutional law, the chief aims of which shall be as follows: [a list of fourteen articles are enumerated, concluding with the provision that] since in no society can any happiness be hoped for without a good constitution (*une bonne constitution*), the Province of the Lyonnais recommends its deputies to discuss no other subject until the French constitution shall be fixed by the Estates General.¹

Among the *cahiers* that of Paris *intra muros* forms a marked exception to the general vagueness. It was drawn up later than the rest, not being completed until after May 5, the day upon which the Estates General met. The committee appointed to draft the *cahier* included a number of distinguished men: Marmontel, Lacretelle, Bailly, Target, Camus and others.² The result of their deliberations is the most complete scheme of a constitution which appeared before that drawn up in the National Assembly itself. The first division of the *cahier* is devoted to this subject, and the representatives of Paris "are expressly forbidden to consent to any subsidy or loan until the declaration of the rights of the nation shall have become a law, and the foundations of a constitution are agreed upon and assured." The draft of the constitution is preceded, like that actually decreed later in the National Assembly, by a declaration of rights, which the *cahier* claims should "constitute a national charter and form the basis of the French government." No other *cahier*, so far as I have observed, except that of the *bailliage* of Nemours,³ contains so clear a statement

¹ Archives Parl., III, 608, 609.

² Stephens' French Revolution, vol. i, p. 50.

³ The third estate of the *bailliage* of Nemours charges its deputies to demand that when the Estates General shall have recognized and set forth those natural and social rights of man and of the citizen, the king shall draw up a *declaration* which shall be registered by all the courts, published several times a year in all the churches, and inserted in all the books destined for the instruction of the earliest childhood. No one shall be admitted or appointed to any judicial, magisterial or administrative office without having repeated this declaration from memory. A more elaborate draft of a declaration is furnished by Nemours than Paris itself.

of this characteristic idea that the declaration of rights is an essential element of the constitution. Not only was this suggestion accepted by the National Assembly, which, as is well known, formulated the "Declaration of the Rights of Man and the Citizen" before proceeding to the constitution itself, but the clauses themselves as they appear in this *cahier* of Paris are strikingly similar to those finally adopted by the assembly. The importance of the well-ordered constitutional provisions suggested in the *cahier* can best be estimated by their close approach to those of the constitution of 1791. I quote a few instances of articles proposed by the Paris electoral assembly:

In the French monarchy the legislative power belongs to the nation in conjunction with the king. The executive power belongs to the king alone.

The Estates General shall be periodically convoked every three years, without, however, excluding extraordinary sessions. They shall never adjourn without indicating the day and place of their next session.

Any one convicted of an attempt to prevent the assembling of the Estates General shall be declared a traitor to his country, guilty of the crime of *lèse-nation* [*sic!*].

In the intervals between the sessions of the Estates General, only provisional regulations may be issued in execution of that which has been decreed in the preceding Estates General, nor can these regulations be made laws, except in the following Estates General.

Many more examples might be given to illustrate the similarity between this sketch and the plan ultimately adopted. The *cahier* claims that

the constitution which shall be drawn up in the present Estates General, according to the principles which have just been set forth, shall be the property of the nation, and may not be changed or modified except by the constituent power, that is to say, by the nation itself, or by its representatives elected *ad hoc* by the whole body of citizens for the single purpose of supplementing or perfecting this constitution.

There was an attempt made during the week preceding the Tennis Court oath to induce the National Assembly, as it now

called itself, to pass a decree in which the formation of a constitution was designated as one of the great objects to be attained. Mirabeau claimed that the king himself had recognized "the necessity of giving France a fixed method of government,"¹ and consequently regarded the laying of "the foundations of the wise and felicitous constitution" as the inevitable and obvious duty of the assembly.² Rabaut de St. Étienne, in a series of resolutions offered on the 15th of June, occupies the same position.³ On the 17th of June the assembly finally defined its constitutional functions in a vaguer form as "the determination of the principles of national regeneration."⁴ Thus, although the representatives of the third estate were chiefly occupied before June 20 with the questions as to the method of voting and the relation of their order to the other two orders, the great question of the constitution was not lost sight of. If the Tennis Court oath was the first official declaration of the purpose of the assembly, it was the inevitable outcome of preceding conditions, and was in fact only a re-statement of the resolution adopted by the assembly several days before (June 17).

It would thus seem clear that the conviction of the necessity for France of a written constitution was not due to any sudden crisis, but was, on the contrary, the outcome of a long period of preparation, during which one essentially conservative influence, at least, that of the superior courts, did much to insure the success of a movement with which they could, at bottom, have little sympathy. It is apparent, too, that relatively little weight should be ascribed to outside example, since the influence of foreign experience sinks into insignificance, as it customarily does upon careful investigation, in comparison with the irresistible tendencies in France itself during the eighteenth century towards a constitutional form of government.

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¹ *Histoire Parlementaire*, vol. i, p. 445.

² *Ibid.*, p. 453.

³ *Ibid.*, p. 457.

⁴ *Ibid.*, p. 472.

ON THE STUDY OF STATISTICS.¹

I.

THE word statistics in English has a narrow and well-defined meaning. It means the enumeration or counting of something. By the statistics of imports and exports we understand the enumeration of all the commodities imported and exported, with their values. Bank statistics are the figures showing the transactions of the banking institutions of a country, the loans and discounts, the circulating notes and the specie reserve — in short, an exposition in numbers of the business of banks. A statistical abstract is a collection of statistics of various kinds pertaining to a single country or group of countries.² A statistical manual or handbook is a collection in condensed form of such figures for a country or group of countries ; and a dictionary of statistics is the same material arranged alphabetically. So common and popular is this use of the term, that speaking of statistics involuntarily brings to mind volumes filled with statistical tables, pages of figures — raw material of such crudeness that almost any use can be made of it by skillful manipulation. Hence also the common sneer that statistics can be made to prove anything, that there are statistics on both sides or on every side of a question.

The cultivators of statistics have themselves set the seal of their approbation on this narrow interpretation of the word. Professor Ingram, when president of Section F (Sociology and Statistics) of the British Association for the Advancement of Science, said in his opening address :

It is plain that though statistics may be combined with sociology in the title of Section F, the two cannot occupy a coördinate position.

¹ Statistik und Gesellschaftslehre. Von Dr. Georg von Mayr. Erster Band : Theoretische Statistik. Aus Handbuch des Oeffentlichen Rechts. Leipzig, J. C. B. Mohr, 1895. — large 8vo., 202 pp.

² *E.g.*, the Statistical Abstract of Great Britain and Ireland ; of The Colonies ; of Foreign Countries.

For it is impossible to vindicate for statistics the character of a science; they constitute only one of the aids or *adminicula* of science.

And Mr. Wynnard Hooper, in a paper read before the London Statistical Society and later in the article "Statistics" in the *Encyclopaedia Britannica*, said that by statistics we always mean the statistics of something, as of the number of bags of coffee imported into London during a certain week, or the number of passengers carried by the Great Northern Railway in a year. The members of the society present when the paper was read were practically unanimous in agreeing that Mr. Hooper had proved his point.

It must be admitted that the official statisticians in England and America very largely accept this view. Their work consists (according to their own opinion) in gathering statistics of something, that is, in mere enumeration and in publishing the result of the enumeration, often without note, explanation or comment. They regard themselves as blind instruments, transmitters of intelligence, like the telephone that receives and carries the message without understanding the content. They occupy a position similar to that of the Scriptural writers under that theory of inspiration according to which they simply wrote down what they were told to write, the message being true not because they had had anything to do with it, but precisely because they had had nothing to do with it.

It is of course obvious that the official statistician should be perfectly honest and impartial in his work. He must give us the statistics as he finds them, not as he thinks they ought to be or desires that they might be. His primary object is not to prove a thesis but to furnish material by which theses may be proved. His attitude is to be objective, and the statistics are to reflect facts, not his subjective opinions. It is perhaps the recognition of this that has led statisticians to leave their statistics in a somewhat crude and undigested form. The attitude is certainly praiseworthy; and although this professed modesty may sometimes have been used to cover indolence or lack of technical skill, yet it has been a step in the direction of scientific progress.

There are signs, however, that this perfect passivity on the part of the statistician is not all that is demanded of him. He must present his material in an impartial way; but that does not preclude its being presented in a systematic way. He must utilize his experience to make his figures intelligible. He is the one who best knows how to manipulate them and it is his duty to make them manageable. His familiarity with the original material gives him expert knowledge which saves him from mistakes and misinterpretations such as an outsider may easily commit. It is the business of the statistician to place this knowledge at the service of the public and to give them not merely statistics, but intelligible statistics.

Advances in the direction indicated are seen in the care with which in modern statistical publications not only the absolute but the relative figures are worked out for comparison. If it is the statistics of sex, we have the proportionate number of males and females in different countries, at different times, the relative increase or decrease during the intercensal period, the proportion at different age-periods, among different classes of the population, *etc.* A further evidence of progress is the use of diagrams, cartograms and other methods of appealing to the eye. All this is merely technical. It is the work of the mechanic in preparing his instrument for its work. It requires skill, but it is merely technical skill. It is still statistics of "something," but it is statistics in a refined form.

The modern statistician does not stop here. He elucidates what his statistics show and what they do not show. He gives us the advantage of his expert knowledge so that we shall not misinterpret the figures. An example or two will make this clear. The bulletin of the eleventh census giving the number of insane in the United States reported a larger number of inmates of insane asylums in 1890 than in 1880; the superintendent of the census remarked that this was due to the larger number of such institutions and the increased care for such unfortunates. The statistician of the Treasury Department recently showed an error of \$75,000,000 in the returns of values of imports of a previous year, due to the fact that

imports from countries with a depreciated paper currency had not been valued on a specie basis as they should have been. Occupation statistics always require explanation because of the difficulties of classification. A dairy maid—is she an agricultural laborer or a domestic? A clergyman who teaches school—is he a clergyman or a teacher?¹

Very often the statistician finds himself compelled to go further in his elucidation. He tries to explain his figures. The English census finds more old women than old men, especially in cities. The general fact, the editor thinks, is due to the less dangerous character of the occupations carried on by women, and the secondary fact, to the circumstance that in cities there is greater opportunity open to old women than to old men in the way of light employments. The number of blind in Ireland is decreasing, owing to the better medical service in the poor-houses and asylums. The distribution of the foreign-born in the United States has been influenced largely by the mere historical fact of the prevalence of slavery in the South. All these things the statistician feels himself bound to point out lest the figures be misinterpreted.

Finally, the statistician often proposes to himself certain problems, and tells us whether his figures can give the solution or not. For instance, the problem of over-crowded tenement houses. Can we get a statistical measurement of the evil so as to determine its prevalence and compare different countries, cities or districts? On this point, the editor of the English census of 1891 speaks as follows:

We must first define what we are to take as a standard of over-crowding. It is plain that the number of rooms and occupants is not in itself an absolutely sure guide, because rooms differ largely from each other in size. Still we may be tolerably certain that the rooms in tenements with less than five rooms will not in any but exceptional cases be of large size, and that ordinary tenements which have more than two occupants per room, bedrooms and sitting rooms included, may safely be considered as unduly over-crowded. [On this basis] there were 481,653 over-crowded tene-

¹ See Census, England, Part IV, p. 35, for detailed discussion.

ments in which dwelt 3,258,044 persons, or 11.23 per cent of the total population ; the average number of persons per room amounting to 2.8.¹

All this is evidently more than the "statistics of something." The statistician is more than the enumerator of facts. He is a student of the relations and regularities of social life. He is more than the mechanic. He is an expert, manipulating a certain instrument of investigation for the purpose of accomplishing certain results. He is not a sociologist, in the full sense of the word, because he does not seek the whole explanation of social organization, but deals only with a certain range of facts.

Various uses of the word statistics show that this more extended activity of the statistician is justifiable and expected. When we say that "statistics prove," we have in mind not only an array of figures, but comparison of these figures with others in order to show that certain relations exist. When we say that "statisticians assure us" that an increase of food-prices is followed by an increase of crimes against property, we refer to an elaborate study of the changes in these two phenomena relatively to each other, extended over many countries and years. We sometimes use the term statistical method, and occasionally even statistical science. On the other hand, we do not use the term statistics in the singular, as we use mathematics, ethics and politics. The Germans have *die Statistik* and the French *la statistique*, denoting the method, art or science. It is evident that in English we have the thing if not the name. How shall we define the procedure and how limit the activity of the statistician? To exactly what work should the statistician address himself, and what is the relation of his work to that of the sociologist? The growing interest in the study of sociology in this country makes these questions pertinent.

On the continent of Europe the statisticians have busied themselves with these questions for many years, and we have

¹ Census of England, Part IV, p. 21. For equally interesting discussions of the tenement-house question, see Mass. Bureau of Statistics of Labor, 1891 and 1892, and Census of Ireland, 1891, Part II, p. 9.

a considerable body of literature on the theory of statistics. Beginning with Quetelet, we have Wagner, Knies, Engel, Von Mayr, Knapp and Lexis in Germany; Guerry, Block and Levasseur in France; Gabaglio, Morpurgo and Messedaglia in Italy; and many others who have written on the subject. In the important work to which I refer at the beginning of this article Von Mayr reiterates his own theory, elaborated in the light of the work of his predecessors and contemporaries. It may, therefore, be taken as an authoritative statement of the most recent notions of the continental school in regard to statistics and their place in the study of social science. It will be worth our while to analyze these conceptions, and to try to determine if they will help us in answering the questions noted above.

II.

With what sort of a discipline, method, art or science have we to do when we speak of statistics in the singular?

Von Mayr's answer to this question is a very simple one:

Man may be looked upon as belonging to nature, or, owing to his spiritual development, as separate from or in contrast to nature. Under the first aspect he is an object of study for natural science; the scientific investigation of the phenomena of man's activity in the sphere of his spiritual life constitutes the content of the social sciences.¹

The scientific study of man, whether as an object of natural or of social science, may be directed to the individual, either by careful investigation of his physical body or by observation of the development of mind, and either by introspection or by study of others.

Scientific study may also be concentrated on specific (*abgegrenzte*) masses of men, simply as masses or in respect to the new relations which spring up among men living together.

¹ The distinction is only a formal one; for in reality man, in spite of his spiritual activity, remains a product of nature, and the natural processes which bind man down to the laws of the animal world are at the same time an important limitation of, and the necessary substratum for, his spiritual activity. The distinction is a convenient abstraction for the division of labor.

For the individuals in such masses do not merely stand like isolated atoms alongside of one another, but develop fixed relations, and especially groups or associations. These associations vary from the simplest almost unorganized groups for general social purposes to the highly organized associations for specific purposes, the most highly organized of which is the state. The object of social science is to study these masses, to observe their activity and the effect of such activity as it discloses itself in fixed relations, associations and institutions. What method shall we employ for this purpose?

Natural science can in many instances not only isolate its object but even subject it to experiment. To social science this experimental method is as a rule impossible. It can only strive by observation to obtain a comprehension of social masses, their activity and the results of such activity. This is done most completely by an exhaustive enumeration and measurement of the elements of the social masses. Such scientific observation of social masses is what we mean by statistics. Statistics may be defined, therefore, as the science of social masses.

The science of statistics as thus defined has two important sides, *viz.*, method and content, or theoretical and practical statistics. The first embraces method in its widest extent, including administrative statistics and the history of statistics. The statistician or scientific investigator must begin with the choice of material. It is impossible to observe all the facts of social life. Some it is impracticable to observe, as the facts of domestic life; others are not worth the trouble; still others it is not wise to question people about, as religious convictions. The amount of material which can be collected is limited by the resources or disposition of the administration. Scientific workers and practical statisticians should unite in determining what sort of material should be chosen.

The real questions of technique begin with the actual work of collecting the statistics. Here there are many questions requiring expert knowledge, such as the arrangement of the schedules, the periods of time chosen for the observations, the

inquiries to be made, the organization of the office, the employment of other officers of the administration, the use of other material, *etc.*, *etc.* The statistician must be on his guard against various hindrances to correct returns, such as a disposition to exaggerate (centenarians); or to underestimate (tax returns); or to evade the question (physical or mental infirmities); or to answer untruthfully (previous criminality). The statistician must learn to arrange his questions in such a way that the answer to one will control the answer to another. A constant exercise of the critical faculty is necessary in order to prevent deception and imposition. The statistician must be an expert in such matters.

The next step, tabulating the figures, requires equal skill and expert knowledge. The arrangement of the figures, the choice of classes, the use of proportional rates, averages, weighted averages, median values, index numbers, diagrams, cartograms and graphical representations, — all these expedients for making the figures intelligible belong to the technique of statistics.

Finally, the statistician must arrange his tables so that they may be of scientific use for purposes of comparison and analysis. Thus, he must give the birth-rates for successive years, the density of population for various divisions of space, *etc.* It is impossible to give even a résumé of the thorough and exhaustive analysis of statistical method given in Von Mayr's book, which discloses the practical statistician as well as the trained scientist. All this pertains to statistics as a scientific method.

The practical part of the science of statistics comprises the actual knowledge thus far gained of the social masses. Von Mayr's second volume is to be devoted to an outline of such results. It will include population statistics, criminal, educational, economic and political statistics. It will give a complete picture of the social masses so far as we are able to observe them by the statistical method. Method and content together constitute the science of statistics according to the continental notion.

III.

If we acquiesce in this notion of statistics as the science of social masses, with method and content as noted above, two difficulties at once present themselves: (1) What is the relation of statistics to the other social sciences? and (2) How shall statistics divide the field with sociology? Von Mayr has an answer to these questions also, and it is as follows:

The whole field of the social sciences may be divided between (1) the general social sciences, (2) the special social sciences and (3) history. The general social sciences are those which busy themselves with social masses or associations in general. Statistics and sociology come under this head. The special social sciences deal either with certain directions of social activity or with certain special manifestations of social life. An example of the first kind is political economy; of the second is philology. Statistics occupies a peculiar position towards all of these special social sciences. It first of all studies the social masses as pure process of nature, as in the statistics of sex, births, deaths and physical characteristics. In these respects it has many relations with natural science, especially anthropology. In the second place, statistics furnishes material for all the special social sciences, especially political economy. In political science it is also extremely helpful, inasmuch as administrative statistics are often used to guide state action. Statistics is, then, the fundamental and general social science, observing social masses directly and furnishing material to the other sciences.

The second question is a more difficult one, *viz.*, as to the relation between statistics and sociology. The latter is often looked upon as the general social science, and thus seems to cover the same field as statistics. Sociology deals directly with social masses or with societies from the primitive horde to the most highly developed nations of modern times. Statistics seems to cover the same field, while not using all the material which sociology claims to utilize. Von Mayr admits that social masses (societies) can be studied as groups or associations,

and that there sociology has a field of its own. He doubts, however, whether societies can be observed accurately except with the aid of statistics. Statistics deals, therefore, with the study of social masses as such; sociology studies societies according to their forms and the laws of their development, and especially with the influence of social organization on the individuals concerned. Sociology he would call the theoretical social science; statistics, the practical social science. Both are introductory to the study of the special social sciences.

It must be confessed that this distinction between statistics and sociology is not very clear. They seem to cover the same ground and deal with the same material. Von Mayr claims that part of the confusion is due to the sociologists, who are not yet agreed as to the scope of their science, nor quite clear as to their method. They claim that it is purely inductive; but what they really do (according to Von Mayr) is to find a basis in history and in the observation of society for certain subjective notions of their own.

A solution of the difficulty seems to me to be suggested by Von Mayr himself when he calls statistics the practical social science, or the exact social science (*die exacte Gesellschaftslehre*).¹ Statistics is that part of sociology which rests on exact enumerations and measurements. Statistical science consists in the exact observation of social masses and the clear presentation, by means of enumeration and comparison, of the facts and relations of social life. It is not of much consequence in this connection whether we use in English the term statistical method or statistical analysis or statistical science. It would be convenient on some accounts if we could use the simple term statistics to include both the method and the systematized results of the method applied to human life in society. As I have already pointed out at the beginning of this essay, the thing is already there, and it would be well to attach the conception to a definite name.

The advantages of the recognition of this conception are

¹ Von Mayr seems to confine this notion to the practical part of statistics. It seems to me impossible or at least undesirable to separate method from content.

twofold. In the first place it would legitimize and encourage the practical statisticians in the effort to treat their material according to the best technique and to present their results in a systematic and scientific form. The men who are to perfect the method must have some intelligent comprehension of the results to be attained. The statistician (to repeat) must be something more than a mere mechanic. He must be an investigator. What we need is not so much a greater body of statistics, as better statistics. The above conception gives the statistician ample scope for the application of the most refined methods, while at the same time unifying all statistical effort by giving it a common object, *viz.*, systematic observation for the purpose of gaining knowledge of social organization.

Even more important than this would be the influence of such a conception on the student of sociology. Statistics is one of the most important instruments of investigation in that science. The sociologist must not only use statistical results, but he should be familiar with statistical methods in order to test the trustworthiness and adequateness of his material. The statistical laboratory, where he can encounter the problems of statistical observation, tabulation, analysis and induction, is as necessary for the student of sociology as the dissecting room is for the physician or field work for the geologist. It is only by such work that we can counteract the tendency to sentimentalism and *a priori* speculation, which are so common among many so-called sociologists. It is here that we can insist upon precise observation, rigid technique and provisional induction, which are the foundation of scientific method. The study of the science of statistics, both in its method or technique as the science of social masses, and in its results as the practical or exact social science, affords the best promise for the development of a sane and intelligent sociology.

RICHMOND MAYO-SMITH.

LABOR AND POLITICS IN ENGLAND.

THE situation in England at the moment offers an alluring though difficult field for the study of the development of democracy. The field is alluring, because the phase through which English politics is passing is in many ways novel ; but the study is difficult, because we are too near in point of time to distinguish really influential from unimportant movements, even if we possessed insight enough to do so. Political parties in England are even now in the throes of a great change. A coalition, if not even a fusion, has taken place between the Conservatives and a group of men who ten years ago represented themselves as the pioneers of "advanced liberalism,"¹ and who were widely regarded as the extreme radical wing of the Liberal Party. More important still, compulsory education has now been operative for about twenty-five years, and the last extension of the franchise, that of 1884-85, has had time to produce some effect upon the incidence of electoral power.

Successive Reform Acts, from 1832 until 1885, have practically given a vote to every man with a settled habitation, and in so doing have gravely altered the balance of political power in so far as that power is dependent upon the counting of votes at the polls. This change has not, however, been effected rapidly. While the Reform Act of 1832 was unquestionably looked upon by its promoters and its opponents alike as the beginning of "the career of innovation,"² it did not involve any material extension of the franchise, or any material alteration in the incidence of political power as between the various classes of the people.³ Yet it prepared the way for the reductions of the

¹ The Radical Platform. Speeches of the Right Hon. J. Chamberlain, M.P. (Edinburgh, 1885), p. 2.

² Chapters of Contemporary History (Pamphlet directed against the "Movement or Radical Party") by Sir J. Walsh, Bart. (London, 1836), p. 8.

³ "The main principle of the Reform Act of 1832 was not the reduction of the franchise. In some boroughs, Preston, for instance, the franchise was raised.

electoral qualification which came in 1867-68 and in 1884-85. The fact, however, that the Reform Act of 1832 did not extend the franchise may be held to account to some extent for the slightness of the change in the incidence of actual political power. If there were fewer squires in the reformed Parliament, there were more rich manufacturers.¹ At the most, capital had a larger share of direct representation and land had less, while the working class had no direct representation at all.² The English experience goes to prove that a class may have electoral power adequate to secure direct representation long before it has the material means or the available *personnel* or even perhaps the desire actually to secure it. Even prior to 1867, the working class had a majority of votes in fourteen constituencies, and had thus the power to elect fourteen members. But only two were even assumed to be elected in the working-class interest, and these were Mr. Fawcett and Mr. Thomas Hughes. The first was a professor of political economy and the second was a barrister. Although the electoral power of the working class was very largely increased in 1867 and 1868, it was not until 1874 that a workingman was elected a member of Parliament.³ Even in the Parliament of 1892 direct representation of the working class was exceedingly slender, and the representatives were by no means united on important questions of working-class policy.⁴

The principle was to take electoral power out of the hands of the corporations, which had usurped the property and the franchise of the boroughs, and to vest it in the inhabitants at large." *Speeches and Letters on Reform*, by the Right Hon. R. Lowe, M.P. (London, 1867), p. 12.

¹ "The Reform Act [of 1832] . . . has given trade not more than 130 members. And these are gradually falling into the ranks of the landowners. . . . It has left class ascendancy quite untouched." Bernard Cracroft, *Essays on Reform* (London, 1867), pp. 186 and 174.

² Cf., however, F. Engel's Preface to English edition of *The Condition of the Working Class in England in 1844* (London, 1892). "The Reform Bill of 1831 had been the victory of the whole capitalist class over the landed aristocracy," p. xii.


³ The direct labor representation in the Parliament of 1892 numbered eleven, classified as follows:

Trade Union Secretaries, past and present, described as Liberals . . .	7
Workingmen, described as Labor Members	4

⁴ On the eight-hours day question, for instance.

Not only the leaders but the rank and file of both political parties still belong to the classes which, since the Revolution of 1688, have held political power in England. The immediate control of affairs has thus remained in the hands of members of the propertied classes, in spite of the extension of the franchise and the wider distribution of electoral power. This has probably been due mainly to the following causes: 1. The inevitable prominence given by rank or wealth, through which one who desires a political career acquires a great start. 2. The advantages of leisure and travel, coupled with those of education and associations definitively directed toward fitting men for a political career. 3. The extent to which politics has become a business in which special aptitude and special training are necessary for success. 4. Difficulties, in the form of jealousy, for instance, which, especially at the outset, impede a man who is endeavoring to get from the "ranks" into such a position of influence as may secure him a place in Parliament (even afterwards he is almost invariably an object of suspicion to those of his own order). 5. Reluctance on the part of the working class to pay the wages of a member of Parliament when many offer to serve for nothing. 6. The expensiveness of Parliamentary elections and the costliness of attendance at Parliament, especially for provincial members, and the reluctance on the part of both parties to pay these charges out of the public purse. 7. The extent to which both parties, impelled partly by good will, partly by fear, have really or apparently met the needs or the demands of the working class.

A thorough understanding of the various current movements in English politics involves at least two separate though allied lines of investigation. First, it is necessary to obtain a clear idea of the main lines of policy of the two political parties; second, it is necessary to embark on the much more difficult inquiry into the opinions of the classes which have the immediate or ultimate control of political affairs.



I.

The limits of the present paper do not admit of more than the briefest survey of the apparent lines of policy of the two great parties. At least since the beginning of the present century both have been engaged chiefly in constitution-making and mending. At intervals they have been forced by economic conditions to adopt legislative projects of an economic character; but these projects have invariably resulted in cross divisions, sometimes even in party disintegration.¹

The broad division between Whig and Tory, Liberal and Conservative, Home Ruler and Unionist is really a division arising out of differences upon proposed constitutional changes.² Economic or, as it is sometimes called, "social" legislation has invariably been forced upon one party or the other. That this should be the case is inevitable. The parties, existing because of differences in constitutional views alone, are naturally reluctant to imperil their existence by social adventures. Yet, especially since 1867-68, both parties have been anxious to take credit for such legislation. Immense pressure was required to secure from a Liberal government the trade-union legislation of 1871, and a Conservative government amplified this legislation, again under pressure, in 1875 and 1876.³ More recently there has been the "Tory democratic" movement, headed in a spasmodic way by Lord Randolph Churchill, and the "Liberal democratic" movement, headed by Mr. Chamberlain. The settlement of the franchise question in 1884 and 1885 left only minor constitutional questions within sight, when the adoption of Irish home rule by Mr. Gladstone at once upset the existing balance

¹ Witness the free-trade movement, the Factory Acts, *etc.*

² The most favorable view of the Conservative position is that in conservatism society is conceived as an organism, and that certain institutions form a vital part of it. Men rather than institutions are to be blamed when necessary. The least favorable view of the Liberal position is that the Liberal regards society as a mechanism, and holds that when things go out of gear the machinery is at fault, and must be altered.

³ The Acts were 34 and 35 Vict., c. 31; 38 and 39 Vict., c. 86; and 39 and 40 Vict., c. 22.

of parties, and provided a new constitutional topic of the first magnitude. The Home Rule Bill of 1886 caused the defection of nearly one-third of the Liberal Party, led by the Marquis of Hartington and Mr. Chamberlain, and the consequent accession to office of a Conservative government. During the years from 1886 until 1892—in Land Bills, so-called Coercion Bills, Light Railway Bills, the events of the Parnell Commission, the fall of Mr. Parnell, the disruption of the Irish Home Rule Party, and finally the Home Rule Bill of 1892, passed by the Commons and defeated by the Lords—the affairs of Ireland took precedence in everything. The reorganization of local government in England and Scotland was the chief constitutional achievement of the Salisbury government of 1886–92; while the retirement of Mr. Gladstone, which immediately succeeded the defeat of his Home Rule Bill, was the main incident of the Liberal reign from 1892–95.

But the making of constitutions is a means to an end rather than an end in itself; and whatever view may be taken of the nature of the end, there must arise from time to time, in the minds alike of those whose temper is conservative and of those whose temper is the opposite, a feeling that the constitution has been discussed to the point of exhaustion. To the one class, however, such a feeling brings only a desire of relief from urgent political discussions, while to the other it suggests that the constitution that has been secured shall now be used for the purpose of obtaining particular objects assumed to be of national or class interest. There can be no doubt that at present people are tired of tinkering the constitution. The Conservatives and Whigs want rest, the Radicals and Liberals want a change in the character of legislation. Lord Rosebery, perhaps, correctly interpreted the feeling of the working class when he described it as saying: “A plague o’ both your houses.”

Each party to-day has a “Newcastle Program.” That of the Liberals was promulgated at a meeting held in Newcastle in 1891; that of the Conservatives at the same place in 1894. These rival programs show conclusively that the older party

lines, excepting so far as constitutional questions are concerned, have practically disappeared, and that no new cleavage has as yet taken place. The projects of the Conservative Party in particular are vague enough ; but in so far as they are definite, they do not differ materially in fundamental principles from the projects of the Liberal program.¹ Nor are any of the projects, on any reasonable theory of their probable effects, fairly to be regarded as revolutionary. They are indeed looked upon by genuine revolutionists with much contempt.

In 1885, prior to his separation from the Liberal Party, Mr. Chamberlain had embarked upon a campaign for the promulgation of a "Radical Platform." This platform consisted in various projects for social legislation which he desired the Liberal Party to espouse. Among these projects were the development of local government, free education, graduated taxation, free trade in land, restitution of improperly diverted endowments and of illegally made enclosures, disestablishment, and the fixation of fair rents in England and Scotland, as in Ireland.² The public interest which Mr. Chamberlain excited at that time was produced not so much by his proposals as by his denunciation of the alleged "sacredness of property" and of the "convenient cant of selfish wealth." These phrases and the pungent criticism by which they were accompanied caused him to be regarded as the leader of the radical wing of the Liberal Party.

When Mr. Chamberlain made his campaign in the country in the autumn of 1885 for the promulgation of the radical program, his proposals were on the one hand applauded, and on the other denounced, as "socialistic." The socialists themselves were willing enough to subscribe to Mr. Chamberlain's phrases about the "fetish of property"; but they

¹ Principal items in the Liberal Newcastle program are these: Irish home rule; reform of the House of Lords; electoral reforms; powers to purchase land compulsorily; local veto upon liquor traffic; extension of Factory Acts; special taxation of feu duties and ground rents; equalization of death duties; municipal taxation of land values.

² The Radical Platform. Speeches by the Right Hon. J. Chamberlain, M.P. Hull, Glasgow, Warrington, Inverness (Edinburgh, 1885).

flouted his "allotments and small holdings," and his other "absurdly insignificant 'practical suggestions.'"¹ At this time, nevertheless, Mr. Chamberlain was looked upon as the apostle of the poor, and as one in whose eyes the "sacredness of property" was at least doubtful. The prominent local Liberals, the large employers of labor and "eminent capitalists" who attended Mr. Chamberlain on provincial platforms, did not altogether relish his "oratorical attacks" upon property, but they tolerated him so long as he was in the party and was supposed to contribute strength to it. During Mr. Chamberlain's period of coöperation with the Conservatives he has had little to say on such matters. His chief point of interest, other than that of hostility to his former party, has been the advocacy of a system of old-age pensions after the model of the compulsory-insurance system of Germany.

The recently chosen Parliament will find in each of the opposing parties a radical wing. Both these wings are far enough away from the standpoint of John Stuart Mill and George Grote, although the Liberal type, in so far as it is represented by Mr. John Morley, is rather nearer than the Tory to the old philosophical radicalism.

So much for the politics of the politicians; the politics of the people are much harder to interpret.

II.

In the middle-class view, the maintenance of the existing social order is to be desired equally on grounds of political and of material advantage. The supremacy of England on the sea is as much an affair of trade as of national glory. Political views in the middle and aristocratic classes are determined by tradition touched with selfishness. The same may be said of the working class. It also has its traditions, its historical antagonisms and its class interests, and these necessarily color its votes. Mr. Chamberlain once said:

I have always had a deep conviction that when the people came to govern themselves, and when the clamor of vested interests and

¹ W. M. (William Morris) in *Commonweal* (1886), vol. ii, p. 12.

class privileges was overborne by the powerful voice of the whole nation, that then the social evils which disgrace our civilization, and the wrongs which have cried vainly for redress, would at last find a hearing and a remedy.¹

But this meant simply that the interests of the new voters must now become clamorous; that the classes recently endowed with political power must exercise their newly acquired privileges; and that the older interests and the older privileges must go down before them. It would be hard to prove that democratic ascendancy has as yet shown signs of securing the "universal interest" of Bentham's optimistic anticipation.²

One naturally turns first to the trade-union movement for evidence upon the state of political and economic opinion among the working people of England; for it is at the annual Trade-Union Congress that their views on such questions are most fully expressed. The earlier efforts of the Trade-Union Congress to influence legislation need not here be followed. They were mainly directed towards securing the removal of legislative restrictions on combination, and later towards the passage of an Employers' Liability Bill and other measures of a like nature. Perhaps Mr. Frederic Harrison correctly represented the prevailing trade-union view as it was in 1883, when he said, in his address to the congress held in that year:

The labor laws passed within the last twelve years alone form a body of legislation for the good of the working classes of this country such as no other civilized country in the world can show; . . . And the result we see, that the relations of capital and labor, of the wages-paying classes and the wages-receiving classes, are in a condition of far less acute antagonism in this country than they are even in the democratic republics of Europe and America. It cannot be denied that this great body of legislation is to a very great degree due to the efforts of the congress. It can as little be denied that it has brought incalculable good to the working class whilst inflicting no wrong on the capitalist class. No one complains of this legislation; no one openly at least seeks to undo it. And the result is that we stand to-day thoroughly satisfied with the principle of the

¹ The Radical Platform, cited above, p. 3.

² Parliamentary Reform Catechism (London, 1818), p. 15. See also below.

law so far as it directly deals with the general interests of those who receive daily wages. I say *in principle*, because what we shall ask for in the way of amending the law relating to workmen are mere extensions of some principle of protection abundantly recognized by the legislature — are simply provisions to prevent evasions of the law and devices for making the law a dead-letter.¹

This statement may be held to represent the older trade-union view. The newer view is much less content with the achievements of the past. Compare the tenor of Mr. Harrison's address with that of the president's address at the congress in 1885, or at the congress in 1889. Apart from individual peculiarities of view, successive addresses exhibit an enlargement of the demands of trade-unionism. Witness this, for example:

✧ What I hope and think worth striving for is that unionism should now begin to demand a larger share in moulding the national life. Wherever there is corporate existence, there let unionism make its voice heard and respected. With unionist parochial managers, unionist town councilors, unionist magistrates and unionist members of the legislature, what could not be accomplished? Why, the unjust employer and the sweater would be harried out of existence. Railway companies who pay eight per cent of a dividend and work their employees sixteen to eighteen hours a day would become an impossibility. Labor even of the lowest and humblest descriptions would be sympathetically dealt with. A public opinion would be formed which would once for all place and maintain labor on its true footing, and place idlers and others with no visible means of support also on their true footing. . . . What is wanted is the concentration of the power of unionism in the proper direction.²

Trade-unionism has, during the past ten years, undergone a great change, not only in its avowed aims, but in the type of men who manipulate its machinery. Although comparatively young men have all along had much more to do with the detail management of the trade-union movement than the

¹ "The Progress of Labour," *Contemporary Review*, vol. xliv, p. 477.

² Mr. Ritchie, Presidential Address. Report 22d T. U. Congress, *etc.* (Manchester, 1889), p. 17.

older men,¹ the very young men have during recent years acquired more potency than formerly. While trade-unionism was still under the ban of the law, and while risk attached to active work in the movement, it was inevitable that men with responsibilities should shrink from too conspicuous positions, and that young men should take these. Though there is still some peril in an industrial sense attaching to prominence in trade-union affairs, there are countervailing advantages to be secured by active trade organizers, and these offer inducements to ambitious men. Another element in the change has been the transference of initiation in trade-union affairs from a group of self-constituted leaders in London to the parliamentary committee of the Trade-Union Congress, which is elected annually by the delegates to the congress, and which is composed of representatives from all the chief industries and from all parts of the country.²

Compulsory education has had its share in making the younger generation at once more confident and more intelligent in attack, while the too exclusively literary character of this education has for the time being probably contributed to promote distaste for manual labor and discontent with its conditions. The trade-union movement was, up till about 1884, entirely in the hands of the older type of trade-unionists, sagacious and steadfast men, with a large sense of responsibility, leaning for advice as to their policy very much upon such men as Mr. Frederic Harrison, Mr. Thomas Hughes, Mr. Vernon Lushington and others, — curiously enough, chiefly Positivists and Christian Socialists of the Kingsley type. This and subsequent middle-class connection was at once an advantage and a disadvantage. It helped the trade-union movement to secure the legislation it wanted; it helped to secure for it, also, toleration and even social consideration. All this was an advantage to the trade-union leaders and to the trade-union

¹ This is usually the case in revolutionary movements. Upwards of half of the members of the government of the Paris Commune of 1871 were under twenty-six years of age.

² For an excellent account of this change, as of the whole trade-union movement in its political relations, see Webb, *Hist. of Trade Unionism*.

movement at the time; but the ultimate result was that the leaders lost touch with the rank and file of the unionists, and some of them lost the sympathy and support of their constituents.¹

✓ So long as the trade-union movement remained in the hands of unionists of the old type,² it was conducted by and for the *élite* of labor. All the unions were organizations of skilled workmen, with the possible exception of the Agricultural Laborers' Union, whose admission into trade-unionism was due to the agricultural lock-out of 1874. Unskilled labor was not organized. It was inarticulate; but the attitude of the unionists toward it was hotly denounced by the socialists, especially in *Justice*, the organ of the Social Democratic Federation. It is a tradition among trade-unionists that a strike or a lock-out is necessary in order to found and consolidate a union. The decisive moment for unskilled labor arrived in 1889, when the conditions of casual labor at the London docks, together with the propaganda of a small number of active socialists, brought about the dock strike of that year.³ The docker's life was bad enough. The finances of the docks were in a deplorable position; the trade of the port of London had been changing rapidly, and the machinery with which the trade was carried on had not as yet adapted itself to the changes. Large numbers of men were employed on particular occasions, while weeks elapsed before so many were employed again. The element of chance in dock employment brought hundreds to the gates every morning. A few were taken and the others were left. This state of matters was partly inevitable and partly the result of defective administration. The Social Democrats grasped the situation, and succeeded in making the docker monopolize public attention and in securing for him public sympathy.

¹ Witness the case of Mr. Broadhurst. See the Report of the T. U. Congress at Dundee, 1889 (Manchester, 1889).

² As represented in the attitude of Mr. Frederic Harrison, quoted above.

³ For an account of the strike, see *The Story of the Dockers' Strike*, by H. L. Smith and Vaughan Nash (London, 1889). For the financial state of the docks and the condition of trade of the port of London, see art. "Docks," *Palgrave's Dictionary of Political Economy*, vol. i. (London, 1893).

Fear of an extensive emigration to the Australian colonies, as well as sympathy for an aggressive anti-capitalist policy, led to the remittance of £30,000 from Australia to the strike committee. This enabled the committee not alone to continue to pay the workmen on strike, but even to support many thousands of loafers who would otherwise have taken the places of the men. The result was at least a partial victory.

The importance of the strike did not, however, lie merely in the gain of the docker's "tanner"; it lay in the circumstance that for the first time the mass of intermittent, low-grade labor which carried on the works of the docks and wharves of London was, at least for the time being, effectively organized. The organization of this mass of labor, which the trade-union movement proper had wholly passed by, at once brought into prominence the men who had accomplished it. Some of them afterwards became members of the London county council and candidates for Parliament, one of them even securing a seat in the election of 1892. Immediately after the organization of the dock laborers they secured admission for their representatives at the Trade-Union Congress. The congress held at Liverpool in 1890 was attended by six delegates, representing 162,000 dockers.¹

This invasion of the congress by unskilled labor² greatly reënforced the "new unionist" movement which had been arising during the previous two or three years. It was, indeed, symptomatic of the victory of "new unionism" for the time over old unionism. Although the tone of the Trade-Union Congress varies from year to year, it is approximately correct to say that from about 1883 an undercurrent of change in the direction of new unionism, with collectivism as part of its creed, began to appear. In 1885, the address of the president of the congress³ was aggressively socialistic; in 1888 and

¹ Report of 23d Annual Trade Union Congress (Manchester, 1890), p. 3.

² The Agricultural Laborers' Union had joined in 1875; but their numbers were in 1890 only 12,000, although in 1875 they returned their membership at 60,000. Cf. Reports T. U. Congresses, 1875 and 1890.

³ Mr. T. R. Threlfall. See Verbatim Report of the Opening Address, *etc.*, by T. R. Threlfall (London, 1885).

1889 the new unionists made themselves felt in eight-hours day resolutions; in 1890 came the invasion of unskilled labor, and each year thereafter the resolutions of the congress assumed an increasingly collectivistic tone. The congress of 1894 may be said to have been an avowedly collectivist body.¹ In that year, for the first time, not only were thoroughly collectivistic resolutions adopted, but the new unionists obtained a secure hold on the parliamentary committee, the executive organ of the congress.

The trade unions may be held to possess a membership of about 1,500,000. This is, after all, a small fraction of the total laboring population of the United Kingdom; though the influence of the movement no doubt extends somewhat beyond the range of membership. For the origins of political and social movements one must look not only beyond the political parties, but even beyond the industrial organizations. Although the cooperative and trade-union movements were alike originated by small bands of enthusiasts who struggled against social discouragement and legal prohibition, they have become established institutions, and have even acquired a certain inflexibility. For the origin of the changes which have been forced upon these movements by their capture, partial or complete, by outsiders, we must look outside of them.

III.

One may pursue his inquiries in workmen's clubs and in debating halls frequented by workmen. In such places one naturally hears mainly the demagogue and the faddist. Among the land-nationalizers, the paper-currency men, the temperance men, the disestablishers, the neo-Malthusians, the secularists, the theosophists, the anti-vivisectionists, the men with antipathies to the game laws, the license laws, the system of banking or the system of education, — among anarchists and socialists of several varieties — one finds it hard to infer any common tendency of thought or action. Indeed, so few

¹ Cf. *The Times* (London), September 5, 1894.

among them have thought out fully the issues of the question which forms the group bond, that any scheme of action, or even any fresh statement of principle on the lines of the original idea, inevitably results in disruption of the group. Witness the division among the temperance party on the question of the Gothenburg license system, and the division among the socialist groups on "the policy of permeation." There is almost no group too small, or too sectarian, or too recently formed to have escaped schism. The very enthusiasm which renders the group possible is apt to make for its disintegration.

The rank and file who comprise the audiences of sectional groups of this sort, both in London and in the provinces, are, as a rule, men occupied in the lower grades of skilled labor or in the ranks of general and casual labor, with some sprinkling of the unemployed. This is not meant as a criticism of these audiences; it is simply an analysis. It is natural that those who are most anxious to hear expounded the new social gospel, whatever it may be, should be those who rightly or wrongly suppose themselves to be suffering from the existing social order. The student of social problems may laboriously make a diagnosis; these people feel or think they feel the disease in their bones. The superior artisan, in constant employment, does not read much. As a rule, he is too exhausted by bodily labor to read serious works, or to devote himself to the task of abstract thinking which is necessary to grasp even a fraction of the social problem. The unemployed or the casually employed read much more. The free libraries are most frequented during periods of dull trade. Thus it naturally happens that the unemployed or casual laborer often knows more from books, as well as from experience, of what constitutes the social problem than his more fortunate regularly employed fellow-citizen. But beneath these grades, — beneath the regularly employed citizen who has no time to read and the casually employed who has too much time, — there are grades who do no reading, but whose hopelessness and whose dullness are at once among the causes of the social problem, and among the reasons of its insolubility.

The best types of the working class are probably the least conspicuous. One finds a workman indistinguishable from his fellows, save perhaps in a certain air of refinement discernible beneath the grime of his trade; one goes to his home, finds him possessed of all the essentials of cultivated life — which he enjoys in an easy absence of ambition and discontent. There is perhaps a certain selfishness in this type which may be begotten of ardent but disappointed enthusiasms for successive schemes of social amelioration. His vigor, skill and self-reliance have enabled him easily to sustain himself and his family. He has even had leisure to think of social progress; but actual contact with propagandism has made him something of a cynic. Less placid and genial, with a keener eye to the main chance, but capable and energetic withal, is the typical member of the coöperative society. In town and country he takes a vigorous interest in his church, which affords an outlet for the spare energy of himself and his family, supplies the means of periodic intellectual and moral stimulus, and by fixing his eyes from time to time on another life, prevents morbid vexation about the shortcomings of this one. Healthy, practical, upright, sober, unemotional, and not particularly intellectual, this type is the backbone of working-class society in many of the industrial centres in England and Scotland. Were one to find his way into a business meeting of a coöperative store, he would be impressed by the practical sense, the alertness about dividends, the aptitude for hard bargaining, frequently carried too far, the jealousy of over-payment of the employees of the store, the shrewd foresight as to the consequences of a projected policy, and, above all, with the self-centered confidence of the men and women, their immediate insight into their own interests, and their positive disregard alike of state action and of the aid of commercial capital.

The above affords, of course, no adequate picture of the working class in Britain; but it is true so far as it goes. Permeated by strange enthusiasms, largely for good things, without any fine sense of the meaning of freedom, or consideration

for the feelings of each other or of others, easily led, hardly driven, by turns emotional and frigid, the British workman is a complex creature. If we would know the net force of opinion in England, we must know not only what the British workman thinks, or what it is suggested to him that he should think; but we should know also what he is. No one has as yet told us that. The British workman of the modern type — the victim, if one may put it cynically, of free education, of the later phases of coöperativism, of socialism, secularism, salvationism, Toynbeeism, and the other enthusiasms with which to a greater or less extent he has been inoculated — is as yet without his artist. He awaits a Dickens or a Balzac or a Zola. We want the vivid insight of a master of fiction to give us the truth. Mr. Charles Booth has given in unrivaled detail a microscopic view of the life and labor of the worker who lives below par or just on the line which separates honest and self-sustaining labor from poverty and crime; but Mr. Booth's work, invaluable as it is, is a panorama; there yet remains to be done — a picture.

IV.

The great depression of trade undoubtedly had much to do with the widespread acceptance of schemes for social amelioration or reconstruction which, especially from about 1881 onwards, were laid before the working people with much zeal by various agencies. Two of these were the land-nationalization movement, and the group of movements which are customarily known as socialistic.

The propaganda for the nationalization of the land carried on by Mr. Henry George and his disciples offered to the dispirited unemployed workman a specious point for definite attack. Industry was obviously out of gear in free-trade and in protected countries alike. The mysteries of currency and of alleged excessive investment of capital in highly durable but not immediately remunerative forms were too recondite for the workman's mind. The rapacious landowner, who absorbed all the

unearned increment and taxed the community for the free gift of the Almighty, was a much more concrete enemy and a more obvious cause of poverty than the invisible economic forces. Hence for four or five years in England, the land-nationalization panacea really had some influence over the minds of the working people and of a certain proportion of the middle class. Even in 1885, Mr. Chamberlain was undoubtedly impressed by the idea; it appears as an undercurrent in his speeches of the time. But the difficulty of translating so revolutionary a proposal into practical action, even through the medium of a single tax, and the absence of any well-devised scheme, contributed to the hopeless defeat of the few candidates who in 1885 made the question a test one at the polls.¹ Soon after this defeat the movement as a separate propaganda almost entirely collapsed, being overborne by the more comprehensive socialist movement which had begun about 1881.

The land-nationalization movement, in itself a failure, contributed, along with the depression of trade and other influences briefly noticed above, to the promotion of an attitude of doubt and criticism towards the existing social system. There was nothing novel either in the process or in the nature of the criticisms, nor was there anything novel in the suggested remedies. The economic conditions were new in so far as they resulted from the spontaneous organization of capital and of labor respectively, occurring contemporaneously with the development of machinery. The consequences of these movements — rapid growth of population; increase in the volume of trade and in the fluctuations of it, with inevitable intermittence of employment; increasing means and desire for luxury, with temporary or continuous lack of power to secure this luxury on the part of a large class who had acquired a desire to secure it — all suggested a connection between progress and poverty which “sprang into the eyes.”

¹ The only exception was the success of Mr. Seymour Keay, M.P. for Elgin and Nairn, who adopted the Liberal program with land nationalization added. The independent land-nationalization candidates were all defeated in 1885. No attempt was made to repeat the experiment in 1892.

The political conditions were also novel ; for the very people who felt "the chill of poverty in their bones" had become the owners of electoral power. Moreover, governmental administration in England had passed its corrupt phase ; there was general confidence in the efficiency as well as in the honesty of state administration. What could be more natural than the development of a desire that the public powers should be employed in removing the inequalities that had originated during a period when the electoral power was in other hands. It was held as proved that aristocratic or middle-class ascendancy had secured to these classes "the maximum inequality in their own favor." The extension of the franchise had rendered the power into the hands of *Demos* ; why should *Demos* not use it for his own interest as his predecessors had used it for theirs ?

It is thus that the various forms of socialism, from the Marxist collectivism of the Social Democratic Federation to the Anarchist communism of the Socialist League, found a lodgment not only in the minds of the working class, but in the first instance especially in the minds of members of the universities and others who felt that material progress was indeed vain if it did not involve an obvious elevation of life all round. A great and manifest increase of general happiness was to be expected and must be secured. Calm discussion of the balance of advantage resulting from individualism or collectivism respectively was set aside as the "sterile controversy" of a "soulless school." It was held to be obvious that unmitigated competition and inviolable sacredness of property had as their inevitable concomitants acute and widespread misery. The opposite of competition is monopoly, and the most effective monopolistic body is the state. The opposite of individual property in the means of production is state property in them. Thus collectivism commended itself at once to the philanthropic enthusiast and to the unemployed workman. State employment would mean constant employment ; state possession of property would mean common enjoyment of it.

The apparent periodicity in the emergence of socialist ideals

among the English people might be held to suggest a fitness for their realization ; yet the contrary might perhaps with equal legitimacy be inferred from the circumstance that each of the movements has been short-lived. Perhaps the explanation of the collapse of successive socialist movements is to be found in their partly political, partly ethical character. The enthusiast for socialism on moral grounds is not always willing to adopt the methods or to sympathize with the manners of the advocate of socialism on political grounds. It is matter of common observation that the aggressive collectivist is often an individualist in a thin disguise. We may infer from all this that socialism in the sense of collectivism, for instance, does not necessarily involve socialization of society or recognition of the brotherhood of man, but may even mean the opposite. "Economical socialism is no bar against moral individualism."¹

The socialist propaganda on its ethical side has no doubt contributed to the awakening in the public mind of an acuter sense of individual and social responsibility, and so far may be held to have been a great gain. On its political side it is no doubt largely an affair of taxation.² In any individual instance it is a question of relative advantage between the voluntary payment for a service to the government and the compulsory payment for the same service by means of a tax. On its political side it may be that socialism will fall a victim to a change of fashion. After a period of febrile activity it may burn itself out for the time. Propagandas for the wholesale regeneration of humanity usually have this history. They are preached by a few enthusiasts in an upper room; they are scouted by the people at large; all the forces of philistinism are necessarily arrayed against them; then they are widely accepted and more widely dreaded. Then divergencies develop in the ranks of the regenerators. The goal which looked so near when adherents and applause obscured the view of it recedes when these fall away. It

¹ B. Bosanquet, *Essays and Addresses* (London, 1889), p. 70.

² As shown, *e.g.*, by Professor J. S. Nicholson, in his brilliant discourse, "Historical Progress and Ideal Socialism" (Edinburgh, 1894).

is well, however, at the present juncture, when collectivism or state socialism is in the widely accepted and much dreaded phase, to look the probabilities fairly in the face, and to inquire whether or not collectivism is likely to become a definite political issue in English politics.

V.

Some indications have already been given of the attitude of the diversified elements in the electorate towards the existing political parties. To these may now be added the suggestion that the retirement of Mr. Gladstone, the failure — so far as one can see at present — of the policy of home rule, and the disintegration of the Liberal Party consequent upon these events, have probably much weakened the power of the constitutional parties to resist social change. The cleavage which has just taken place is doubtless merely temporary. With the passing away of the Irish question in its acute form, and with the fading of the personal differences which have been a large element in the defection of the Liberal Unionists, there will not improbably appear a fresh cleavage when "social" legislation reaches an active phase, or if the recognized parties should become the sport of an aggressive and compact third party.

The artisans of aggressive views and those members of the professional and other classes who sympathize with them regard political parties as of use only in so far as they are available for the promotion of their views. The lesson which the Irish Home Rule Party gave in 1885, when, having secured the fall of the Liberal government, it afterwards advised its adherents to vote for Conservatives at the polls, not for love of these but solely to defeat the Liberals, has not been lost upon aggressive minorities. These tactics may be destined so to unsettle political conflicts between the parties as to bring about a coalition against the disturbers. The extent to which a minority faction adopting this strategy can succeed in inspiring dread in the regular parties alternately will depend upon the skill with

which the faction is manipulated. There is, however, an important difference between the Labor Party, for instance, and the Irish Home Rule Party of 1885. The Irish Home Rulers were then united upon a single point of attack, though their subsequent schisms have probably put it forever out of their power to repeat the experiment successfully. The Labor Party is not as yet united upon any point of attack. However severe the contest between labor and capital may be, it can hardly as yet be described as a political contest. A large part of the problem lies in the likelihood of its becoming so.

It seems necessary to analyze the general term "socialist movement," and to discover what precisely it means in England at present. The limits of this article do not admit of a description of the socialist movement during the past fifteen years;¹ it must suffice to give a general view of its present position. Apart from the anarchist group, which disbelieves in political action of any kind and which discourages any attempt to secure social progress by means of Parliament, there are broadly two parties in the socialist political movement, though these parties are again subdivided and cross-divided by shades of difference, personal and otherwise. There is, first, the group which is engaged in what has been called "the pick-axe movement."² This group continues the tradition of the early days, that is, of 1883-85, in which they "denounced the Liberals, Radicals, trade-unionists and coöperators."³ They are the extreme sectarians. They take "socialism as a doctrine which they have to thrust down other people's throats."⁴ Their policy is one of uncompromising collectivism. They would prevent the workingman from voting for any candidate who does not declare himself "in favor of nationalization of land, shipping, railways and all other means

¹ This has, moreover, been done up to 1888 by William Clarke in the *POLITICAL SCIENCE QUARTERLY*, III, 549 (Sept. 1888); and by Sidney Webb, *Socialism in England* (London, 1890).

² George Bernard Shaw, in "Liberalism between Two Stools." See the *Labour Leader*, December 1, 1894. No critics of socialism are so pungent and intelligent in their criticism as socialists themselves.

³ *Ibid.*

⁴ *Ibid.*

of production.”¹ Extremists of this type are much more antagonistic to those who are near their point of view but not quite at it than to those diametrically opposed to them. There is thus much truth in Mr. George Bernard Shaw’s frank statement that “the labor movement has broken down by the absence of the democratic spirit among socialists themselves.”² The original exponents of this militant type of sectarian socialism were organized in the Social Democratic Federation.³ The more recently formed Independent Labor Party adopts to some extent the tone, though it does not wholly share the views, of the Social Democrats. Its policy is to run candidates holding collectivist views for school boards, boards of guardians, county and town councils and the House of Commons. The plan involves much expense and a large number of men. For the London municipal elections, *e.g.*, the party supported more than one hundred candidates.

There is no doubt something to be said from the point of view of political strategy, for an uncompromising policy; but the question is, how long will it be possible to keep a sufficient number of people up to the pitch of demanding unmitigated collectivism. The experience of such movements has shown that people cool off rapidly when they find that the goal is much more distant than they had supposed. It is easier to keep public interest at high tension for an object that is being rapidly gained than for one that continues to appear very remote.

The other wing of the socialist movement may be identified generally with the Fabian Society, although this society is by no means coextensive with it. The history and views of this interesting organization are set forth with much wit and candor in the Fabian Tracts.⁴ To the provincial, the Fabians

¹ Report T. U. Congress, Liverpool (Manchester, 1890), p. 36. This motion was lost by 263 votes to 55. The official report has 363, but this is an error.

² G. B. Shaw, “Liberalism between Two Stools,” cited above.

³ The Social Democratic Federation has never recovered from the discredit attaching to its acceptance of financial aid from the Conservative Party in the general election of 1885. Subsequent disputes have led to a succession of defections.

⁴ Especially Fabian Tract No. 41: *The Fabian Society: What it has Done and how it has Done it.* By George Bernard Shaw. London, 1892.

labor under the disadvantage of being cockneys, and they have very narrowly escaped earning the description of their own ingenious phrase — “gushing enthusiasts who mistake their own emotions for public movements.” The strong point of the Fabians has always been “irreverent criticism.” As a rule, this “irreverent criticism” has been wholesome. If it did not reveal the naked truth, it gave at least an unaccustomed reflection of it.

The policy of the Fabians is ostentatiously one of compromise. They want collectivism; meanwhile they will take whatever makes that way and will presently “ask for more.” They are indifferent about party and are as frankly critical of the Liberals as of the Conservatives. Although they constitute a society, they do not believe in the continuous organization of new sects. They throw cold water upon the Independent Labor Party¹ and similar organizations, and while freely criticising the methods of such bodies, they prefer to strengthen the hands of the trade unions, the coöperative societies, the “progressive” party in the London county council, and in the London school board and the like. They regard themselves as political advisers in general. While their principles are avowedly collectivist, they devote themselves, among other exercises, to attacks upon the administration of the government departments.²

The program of the Fabians is as follows :

Adult suffrage, Parliamentary and municipal.

Payment of members and of election expenses.

Second ballot.

Taxation of unearned incomes.

Municipalization of land and local industries.

Provision of education at public cost.

Nationalization of canals and railways.

Eight-hours day.

Parish councils for the agricultural laborers.

¹ Preferring to leave the origination of such a party to the trade unions.

² See the clever manifesto “To your Tents, O Israel !” *Fortnightly Review*, November, 1893; reprinted as Fabian Tract No. 49, January, 1894. Cf. H. W. Massingham’s reply, *Contemporary Review*, December, 1893.

Home Rule.¹

Reform of the Poor Law.

This program, whatever may be said of the probable economic and political effect of its projects, contains ideals admittedly remote, mingled with practical proposals whose immediate realization is quite conceivable. Parish councils, free education, reform of the poor law, including old-age pensions, payment of members and the second ballot have all been advocated on grounds other than socialistic. The Fabian policy aims at securing these mediate measures by availing itself of the services of any party, without alienating the parties by springing upon them an uncompromising demand for out-and-out socialism.²

What is the attitude of the mass of the working people toward these proposals? Is there truth in this statement of a popular writer?

Whatever may be said of that class of literature represented in Germany by Karl Marx's *Kapital*, in America by Mr. Henry George's *Progress and Poverty* and Mr. Bellamy's *Looking Backward*, and in England by the *Fabian Essays*, it is deserving of the most careful study by the student of social phenomena; for it is here, and here only, that he is enabled to see with the eyes, and to reason for that large class of the population who are confronted with the sterner realities of our civilization.³

To me there appears no basis for this assertion. Whatever may be the soundness or otherwise of the criticisms of existing society or of the nostrums to be found in these writings, no one realizes more fully than the propagandist of socialism, that the idea that any one of them represents the opinions of the working class or of any considerable section of it, is an entire delusion. Not one of the writers of these works was a workingman. Their sympathy with the working class goes without saying: but their point of view is literary or scientific;⁴

¹ Fabian Tract No. 11: The Workers' Political Program. London, 1891.

² Cf. the characteristics of the American as opposed to the European party idea as noticed by de Tocqueville. *Democracy in America* (New York, 1838), p. 176. The Fabians seem to have formed themselves on the American model.

³ Benjamin Kidd, *Social Evolution* (London, 1894), p. 69.

⁴ Not that any of them reaches a high level.

it is not proletarian. The proletarian cannot afford to wait for a remedy which may improve the next generation or the next again. He wants immediate relief, and he is really indifferent as to the class from which he gets it or the species of political philosophy which sanctions it. He is even largely indifferent to freedom, although he is overcome now and again by spasms of desire for mere absence of restraint.¹ He has neither the energy nor the training to think out a social philosophy, even if he had the time to do it. No doubt the "unemployed" hold socialist views; but these have come to their minds through the suggestion of others, have been imperfectly grasped, and have been practically applied in a manner that has been as a rule untoward and ineffectual.²

Opponents and critics of the socialist movement are no doubt very ignorant of its principles, and lack sympathetic insight into its real meaning; but they are right in this, that the real barrier against socialism is human nature. This is true in several senses. Not only does the human nature of the upper classes forbid the idea of their abandoning their position of advantage without a struggle; not only do divisions among the socialists themselves militate against the presentation of that united front which is essential to success; but the nature of the people whom socialism is specially desirous of benefiting is such that despair seizes from time to time even the most enthusiastic and disinterested of propagandists. The workingman may work out his own salvation; he refuses to be saved. It is as difficult for the religion of socialism to enter the mind and heart of man, in the full sense of conviction and conversion, as for any of the historical religions. The proletariat presents a dead wall to its own progress. The bulk of the working class, moreover, have so far exhibited no

¹ The "unemployed," for instance, will submit for a time to the discipline of the Salvation Army for the sake of the shelter and food which accompany it, and will then go back to the slums and freedom.

² Witness the history and policy of the Social Democratic Federation, and compare the address of Mr. G. B. Shaw quoted above, together with the tract, "The Fabian Society; What it has Done and how it has Done it." Fabian Tract No. 41.

more disposition to have their voices drowned by the class beneath them than have the upper classes ; besides, it is well realized that state socialism is a middle-class idea and has not been evolved by the working class in travail of spirit.

While the socialist propaganda may be overestimated, as in the quotation above (page 509), it may be underestimated as well. The idea of collectivism may not have been spontaneous ; it may even have been to some extent foreign to England ;¹ and yet it may have acquired a hold on at least a small and active section of the working class. That it has secured such a hold is no doubt true ; but from the point of view of politics, all will depend upon the skill in manœuvring possessed by this section. No doubt they will acquire skill, but this takes time ; and so far their own allies admit that they have shown no evidence of the acquisition. Perhaps the plain truth is that the working class, however they may be on sentimental grounds attracted by the prospect of a socialist heaven, are not prepared to leave the "solid pudding" of capitalist employment, and to entrust the "stern realities" of daily needs to the leaders of the socialist movement. It is one thing to harangue a crowd and secure applause at a street corner, and quite another to convince even the same people to permit themselves to be governed by the speaker.

Thus, apart altogether from the soundness or otherwise of collectivism as an ideal, there does not seem much likelihood of its immediate realization, saving for two considerations :

First, the activity of the propagandists may again, as in 1885 and in 1892, frighten the recognized parties into adopting some part of the aggressive program.

Second, a trade crisis or a prolonged depression might impel the working class to embrace socialism in such numbers that a large socialist party could be formed in Parliament.

On the other side, there is the possibility that the step-by-step realization of the Fabian program, for instance, would set in motion new forces which might tend to overbear the collectivist movement itself. If, for instance, the second ballot

¹ Although Marx is said to have received his inspiration from English writers.

were established, the result might be the rising of numerous new parties and sections of parties. The weakness of propaganda would then be evident. No one would reckon seriously with a party which, on an open first ballot, could only muster a few supporters; and on occasion the forces of widely divergent parties would be combined against one to its destruction at the second ballot.¹ Again, while if the labor-vote concentrated itself upon one point in the program, and that already a popular one, it would unquestionably be carried, yet the collectivist demands look so large as they stand, that each item imperils the other.

VI.

If, however, the collectivist movement should, in spite of the drawbacks indicated above, secure for itself a definite place in English politics and definitely color legislation, what may be regarded as likely to be some of the immediate consequences?

The passing of abstract resolutions is one thing, and the construction of legislation is another. In the case of the eight-hours day, and even more in the case of the "living wage" advocated by some, divergent interests must arise — interests divergent as between district and district in the same trade, and trade and trade in the same district. This divergence continually makes itself manifest in trade councils throughout the country, and sometimes at the Trade-Union Congress. The war of separate interests, customarily attributed exclusively to commercial competition, is in fact largely industrial, and is probably to a great extent inseparable from distribution of labor, as the war of territorial interests is inseparable from distribution of land. At present the conflict of separate industrial interests, where the workmen alone are involved, is fought out in the trade-union meeting by those best informed or most deeply interested. When it reaches a dead-lock, appeal is made to the Trade-Union Congress, where again it is discussed by experts in such matters. The regulation of

¹ These developments have occurred in France, where the second ballot has produced an amazing crop of new parties, none of them by itself of any great importance.

industry by Parliament would transfer these discussions to that body.¹ The increase of freedom and of local self-government in such a case would not be obvious. It can hardly be seriously intended that changes in productive processes should be made the subject of Parliamentary lobbying, and permitted or not permitted according as the opposition to their introduction is clamorous or not.

Yet part of the whole collectivist movement is in the direction of rescuing neglected interests — of rescuing the non-employed from non-employment, of rescuing from overwork those who are overworked, or from underpay those who are underpaid. This is very well as a general statement; but one has only to go to a trade-union meeting to realize what it means. There one finds at once in what complicated detail apparently simple matters are involved — how really complex is the industrial machine, and how hard it is to decide in a judicial way between the conflict of interests.² The same divergence occurs, though in a less degree, in the coöperative movement, where separate interests as well as separate views come into conflict. A great part of the energy expended in these movements has been expended in the conflict of separate interests and in the conflict between these and what has been assumed to be the general interest. When any industrial or commercial legislation comes before Parliament, the rivalry of interests at once appears.³ Indeed, indications are abundant that neither capital nor labor has, to more than a superficial view, any solidarity. It is doubtful whether individual, or at least group interests — for

¹ "For the future, the echo of the voices of those who suffer from economic changes will be heard clamoring for relief within the walls of St. Stephens and the urban guildhalls." Hubert Bland, *Fabian Essays*, p. 204 (London, 1889).

² There is, for instance, frequent friction between the ship-joiners and the ship-carpenters, and between the riveters and their holders-on. The slightest inquiry immediately reveals abundant divergence of interests. The growth of sectional interests in the trade-union movement is admirably discussed in Webb's *History of Trade Unionism*.

³ Witness the case of railway legislation, where the different railway companies have separate interests, and where large traders, small traders, long-distance traders, short-distance traders, seaport and inland traders have each separate interests. Cf. "The English Railway Rates Question," by J. Mavor, *Quar. Jour. of Econ.*, vol. viii, nos. 3 and 4.

the group is simply an organization of individuals, in order that they may the more effectively secure their individual interests — have diminished in their sway, in spite of alleged progress in altruism. The clash of individual interests, within quite recent times, has retarded the most promising schemes of social amelioration. The calmness with which the group interest is accepted as synonymous with the general interest is indicative of the extent to which individualism has permeated modern thinking on economic questions. That in the clash of group interests the general interest must be secured, is as reasonable or as unreasonable an assumption as that in the clash of private interests the general interest must be secured.

Apart from the contest of labor against labor and capital against capital, there is the greater strife of labor against capital. This bulks so largely in the eyes of some that it is regarded as the real issue "in all politics."¹ This, however, is not yet the case. Indications have been given of the difficulty of organizing labor as a political force. The organization of capital is perhaps even more difficult. When the socialists attack both political parties on the ground that they are alike capitalistic, the assailants apparently fail to notice that even this party division breaks the capitalist ranks into two. Commercially, capital is more divided, more mobile, less conservative in its movements than is labor, and is equally subject to the influences of competition. There is almost no question upon which it can be said strictly that the interests of capitalists are one, any more than this can be said of the interests of labor. While the forces of capital and labor are not as yet solidly marshaled on opposing sides, there is a disposition on the part of the socialist propagandists to believe that they are. This leads them to expound with cynical frankness their views of the political relations between capital and labor.

Let it be seen that the London workman is at last aroused, that he knows on which side his bread is buttered. One lesson will be

¹ "The great conflict between organized labor and organized capital . . . is now the real issue in all politics." Sidney Webb, in the *Workman's Times*, London, January 9, 1892.

ample. . . . In this case there is a community of interest between the Independent Labor Party and the Liberal Party. Let the Labor men use the Liberals to whip the unfair employers, and let the Liberals use the Labor men to castigate the ground landlords and the rack-renters, and between the two they will administer such a drubbing to the distressed dukes and the other believers in the power of the money-bags that they will not again quickly so insolently attempt to ride roughshod over the rights of the many in their own selfish interests.¹

And again :

. . . Henceforth [after the London county council election, March, 1892] the workman is to step into his proper place in the representative assemblies of the nation. He is no longer to be simply the governed, but to take his share in the work of government. For he has now become so strong that if he is not treated fairly he can make it impossible for either of the great parties in the state to govern by themselves. They could only hope to do so by a coalition, and, for our part, there is nothing we could like better than to see them make the attempt. Once the capitalists of the Tory and Liberal parties come to a common understanding with the intention of maintaining that hold on the legislative machine which they have hitherto held, they would be swept away as the chaff before the wind. . . . We shall have a period during which one party will bid against the other for the workmen's votes. They have been doing that ever since 1868, but hitherto they have only made promises. They are now beginning to give an earnest of their pledges. On this occasion the Liberals have bought the labor vote, partly by their record and partly by their program. . . . As a pledge of their sincerity they have allotted a number of seats to the Labor Party. In performance of their part of the contract, the Labor Party have placed them in power with a vastly increased majority.²

This tone might be indefinitely illustrated by reference to the labor newspapers and to labor addresses. The general interest is either ignored or is assumed to be identical with the particular interest which is clamoring at the moment. It is this which has produced an uneasy feeling, especially among those who have some claim to be regarded as philosophical

¹ *The Workman's Times*, London, February 27, 1892.

² *Ibid.*, March 12, 1894.

radicals, and who, in their attachment to the idea of freedom, have hitherto had invincible faith in the people. They leaned for a time in undisturbed optimism upon the Benthamite principle: "Every man follows his own interest as he understands it, and the part of the community which has political power will use it for its own objects. The remedy is to transfer political power to the entire community."¹

But political power and electoral power are not quite the same, and the "general will" has no infallible interpreter or trustworthy means of declaration. The general interest is not necessarily secured by the general vote; for the general vote may mean simply general opportunity for demanding the satisfaction of private or group interests. The spectacle of English politics becoming closely assimilated to the politics of the United States when a tariff bill is being discussed and the opposing interests are lobbying at Washington, is not attractive to the philosophical radical. He did not expect that "the reconstruction of society on a collectivist basis" would be among the first demands of "the entire people" into whose hands he had confided the exercise of political power.

The elements of discouragement for the socialists may be taken as crumbs of comfort for philosophical radicals and Conservatives of the anti-democratic type.² The labor movement is ineffectual. The working class does not trust its leaders, and the leaders do not trust each other. These leaders have not shown themselves possessed of any skill in parliamentary debate or in electioneering tactics. They have been easily won over by social and political influence; they have been more potent on the platform than in the council. The working class is divided into innumerable sections by differences in "views" or in interests. It is too selfish or too astute to pay the expenses of labor candidates. If these think they can win a collectivist state for it, they are welcome to make the attempt.

¹ Sir Henry Maine, interpreting Jeremy Bentham. *Popular Government*, (London, 1886), p. 83.

² Although these last have all along had the satisfaction of being able to say: "I told you so."

Should the agitators succeed, the working class will gain; should they fail, nobody but the agitators will be any the worse.¹ The cynic might say that the mob is always irresponsible and always anxious to save its head and its pocket.

The results of the recent general election in many ways confirm these criticisms. No doubt in some constituencies, such as Newcastle-on-Tyne, the labor vote cast against the Liberal candidate secured his defeat; but the smallness of the direct labor vote, the numerous cases in which labor candidates were defeated in working-class constituencies, and above all the return of an overwhelming Conservative majority, show that *Demos* has not yet entered into his kingdom. The disposition among the rank and file of both parties in the new Parliament will probably be to give the Tory-democratic coalition an opportunity to bring forward social legislation — old-age pensions, for example. This will undoubtedly bring out the sectarianism above described; for the Friendly Societies will steadfastly oppose old-age pensions except on certain onerous terms; and the socialists will object on the ground that the measure does not go far enough. The financial arrangements also will awaken the interests of different sections. The collectivist program as a whole must necessarily remain in abeyance. All these things show that the place of labor in politics is as yet uncertain, were it only because of the divergent and fluctuating interests and views of labor itself.

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¹ These criticisms are mainly collected from trade-union and socialist addresses.

REVIEWS.

Les Origines de l'Ancienne France: X^e et XI^e Siècles. II. Les Origines Communales. La Féodalité et la Chevalerie. Par JACQUES FLACH. Paris, Larose et Forcel, 1893.—584 pp.

The second volume of M. Flach's *Origines de l'Ancienne France*, valuable as it is for the whole life of the middle ages, calls for attention in this place, where historical investigations are viewed mainly in their relations to the larger features of social evolution, chiefly on account of the early chapters, which may not improperly be described as one long polemic against the late M. Fustel de Coulanges. To M. Flach's treatment of other themes, such as the rise of the mediæval town, I hope to return on some other occasion.

M. Fustel's view is stated by M. Flach (page 28) with sufficient accuracy as follows :

The organization of the country districts of Gaul, before and after the Germanic invasions, was based entirely on the Roman organization. The Romans either did not know, or were but slightly acquainted with, the village ; they knew only the villa, the large farmstead with its dependencies, the center of a considerable estate. The villa-system introduced by them into Gaul there developed and prospered. The Barbarians found it there, and adopted it so completely that all the rural population, with but few exceptions, was [soon] to be found divided among these villas.

This, as we have just said, is a fair enough statement of M. Fustel's theory : though it should be carefully borne in mind that that great scholar took frequent occasion to make it clear that all that he was arguing for was the *predominance* of the villa-system, and not its complete occupation of the field ;¹ and also that by "village" he meant not simply a cluster of houses, but something like the "village" of modern France — "a group of some fifty or a hundred families not only free but *proprietors of the soil*."² And upon such a theory M. Flach does well to concentrate his attention ; for if accepted, it would have the profoundest influence upon our conception of the subsequent social and economic history of France and, indeed, of western Europe. M. Flach's utterances have been received with a chorus of welcome by those to whom M. Fustel's opinions, or

¹ L'Alleu, pp. 35 (top), 37 (top).

² *Ibid.*, p. 38.

his methods of expressing them, were distasteful. And yet in my judgment M. Flach's book leaves the subject very much where it was before. That this is so will appear from a review of his argument.

1. As to Celtic Gaul (page 31). Cæsar tells us there were very many *vici*. True. But, as M. Flach goes on to say, it is extremely probable from other reports of Cæsar that "the population of these villages was composed of the clients and tenants of the chiefs, knights and druids." The full force of such an admission can only be grasped if we keep well in mind the significant words: "*Plebes pæne servorum habetur loco.*"¹ And to any one who has a keen sense of social evolution, the problem frames itself in some such question as this: What would be likely to be the effect of Roman rule when it came upon dependent groups such as M. Flach indicates? This is a question he makes no attempt to answer. Instead of doing so, he goes on to remark that according to Cæsar there were *aedificia* and they were scattered over the country. M. Fustel had argued² that the meaning of *aedificia* might be explained by the practice of Varro and Columella, who used the word to denote the farm buildings in the midst of a villa-estate. M. Flach on the other hand declares that "la plupart semblent de petites fermes éparses dans la campagne, habitation du *paysan* avec granges, écuries ou étables." For all proof he refers to a number of passages of Cæsar, which speak of the difficulty of getting fodder when *aedificia* are scattered, or the like, and which give absolutely no indication of the social position of the persons to whom the *aedificia* belonged. And by thrusting in that little word "*paysan*," which inevitably brings to mind the modern French peasant, he imports into Cæsar just what he seeks to prove from him. If it must be confessed that M. Fustel, on his side, leans too heavily upon the authority of Varro, it must be pointed out that M. Flach's imagination is singularly limited by modern associations when it begins to play round "*rara et disjecta aedificia.*" And then he throws evidence to the wind, and goes on: "*Leur réunion*" — which Cæsar has never hinted — "*forme le village disséminé, dont le type se retrouve de nos jours en Bretagne et en Suisse.*"

Perhaps! But between "our day" and that of Cæsar are eighteen centuries, in which a good deal could happen.

2. In any case, the relative numbers of the dependent groups whose existence M. Flach allows, and of the independent groups in which, without clear evidence, he also believes, we can only judge

¹ De Bello Gallico, VI, 13.

² Origin of Property in Land, p. 146.

from what Cæsar tells us of social conditions generally; and we have already seen what that is. M. Flach, however, goes on with happy serenity to the Roman period: "Après la conquête romaine, les villages," (which? dependent or independent? that makes all the difference) "disparurent-ils? Loin de là. Leur existence nous est attestée par les inscriptions et les itinéraires" (page 32).

As far as the several parts of his argument can be disentangled it seems to be composed of the following propositions:

(a) That the inscriptions and laws make frequent mention of *vici* (pages 32, 33). This is, of course, allowed by M. Fustel; but it is pointed out by him that the term *vicus*, designating the lowest administrative unit, was applied to a street or to a quarter of a town, as well as to a rural group.¹

(b) That rural *vici* were inhabited by various classes; by most of the middle class known as *possessores*, by townsfolk who had become *coloni* to escape taxation, by tenant farmers, by tenant slaves (pages 34-37). As to the last three classes, M. Fustel has whole sections on each, as *constituents* of the villa organization;² where he undoubtedly differed from M. Flach was in supposing that each *vicus* thus inhabited was really the property of some person or family. As to the *possessores*, M. Fustel grants that there must have been some villages in which these preponderated, to account for the powers of joint action and self-government which some *vici* evidently enjoyed.³ It is fair to argue, as M. Flach does elsewhere (page 49), — that he makes too sharp a distinction between "villages d'hommes libres" and "agglomérations de serfs." But after all it is a quantitative question. M. Flach thinks it "*invraisemblable*" that most of the *possessores* lived in the towns; Professor Marquardt believes that "*grossentheils*" they did, and "left on their property only *coloni*, slaves and freedmen."

Moreover, M. Flach himself declares that "the rapid growth of the Gallic towns under Roman rule drew thither the aristocracy of the country, and henceforth they only visited from time to time their *aedificia* now transformed into *villae*, or their *villae* newly created" (page 34). These are the estates on which M. Fustel fixes his — perhaps too exclusive — attention. In what proportion to these did the free or composite villages stand? M. Flach seems to assume

¹ L'Alleu, p. 38. Cf. Marquardt, Römische Staatsverwaltung, p. 8, and see also *ibid.*, p. 9, n. 4, for the difficulties due to the circumstance that many of the inscriptions seem to refer to town *vici*.

² L'Alleu, pp. 50-79.

³ *Ibid.*, 40.

that the latter preponderated. For an unpartisan opinion we cannot do better than to turn to Professor Mommsen :

Such as Cæsar found the Gallic communities, with the mass of the people held in entire political as well as economic dependence, and an overpowerful nobility, they substantially remained under Roman rule ; exactly as in pre-Roman times the great nobles, with their trains of dependents and bondmen to be counted by thousands, played the part of masters each in his own home.¹

(c) That the *vici* had a local administration of their own (pages 36–40). That where the other conditions allowed it the *vici* might enjoy such rights, is proved by the laws ; and that *some* did exercise them, is proved by the inscriptions. This M. Fustel allows,² though not so distinctly as one could wish. But that every *vicus* enjoyed local self-government is a different matter. Even M. Flach would allow that in many cases the *vicus* — as in the well-worn instance from Cicero's letter³ — was nothing but a private estate.

3. Then comes a brief chapter on “the villages of the Germans before the invasion” (page 43). We have to thank our author for excerpts from a report of the year 1844 upon the state of Algiers, which present some remarkable parallels to the well-known passage of Tacitus concerning the Germans. But the value of M. Flach's own attempt to reconstruct early German society may be not unfairly judged from his treatment of the other *locus classicus*, the passage from Cæsar. To pass over his picture of the “impenetrable forests and sandy plains (*landes*)” separating the peoples — for which he boldly refers to Cæsar's “*vastatis finibus*” ;⁴ what is to be said of this :

A l'intérieur de ce territoire, les chefs ou principaux de la peuplade assignent chaque année à chaque clan (*gens*) un territoire plus petit *que les chefs du clans répartiront à leur tour entre les diverses familles* (*cognationes*).

Cæsar's words are : “*Magistratus ac principes in annos singulos gentibus cognationibusque hominum, qui una coierunt, quantum et quo loco visum est agri attribuunt.*”⁵

It will be seen that for *two* stages in the process M. Flach has absolutely no authority in Cæsar. If we knew certainly, from other evidence, that first there was a distribution to *gentes* ; that the *cogna-*

¹ The Provinces of the Roman Empire, trans. Dickson, I, p. 93.

² L'Alleu, p. 41, n. 1.

³ Ad me scribis, mea Terentia, te vicum vendituram.

⁴ De Bello Gallico, V, 23.

⁵ *Ibid.*, VI, 22.

tuones were parts of the *gentes*; and that there afterwards followed a further distribution to these *cognationes*. we should have to say that Cæsar made a singular muddle of his attempt to describe the method of partition. But we do not know all this.

4. Finally we pass to Frankish Gaul. Here M. Flach draws an important distinction. In the north, northeast and east of Gaul he believes that the German clans remained united, and that they settled upon unoccupied territories (pages 56-59), there, apparently, the whole "mark system" grew up. Reaching this point M. Flach seems to rely entirely on his modern German authorities, especially Waitz, and he does not deign to consider M. Fustel's detailed examination of their evidence in his *Recherches* and elsewhere; although he agrees with him as against some of his adversaries that the inhabitants of the *villa* in the section *De migrantibus* of the Salic Law can hardly be regarded as co-proprietors. In the rest of France he supposes that "the kings and principal chiefs seized the *villae*, whether still being worked or abandoned, and created new ones . . . by the aid of Gallo-Romans skilled in agriculture and versed in rural economy" (page 55), but he urges that all the "simple warriors" cannot be supposed to have become tenants of *villae*. They entered, he supposes, into the free or composite villages, and revived them (page 56). This seems possible; though M. Flach gives no very definite evidence in support of it. Here, again, the quantitative problem forces itself upon us; and this he does not face. He makes, it is true, a number of positive assertions, as that numerous places can be mentioned which were "veritable villages," although they bore the names of individuals with the suffix *acus* (page 50), and he cites M. Longnon as testifying that places whose modern names contain traces of *vicus* were "veritable villages" from the Frank if not from the Roman period (page 53); but he gives us no means of testing the accuracy of the statements. The evidence adduced by M. Fustel certainly raises a presumption that from the first the large properties predominated; and if so, and if, under the pressure of taxation and invasion, the small proprietors were drawn into the *villa* vortices (*cf.* page 61), then it would appear proper to see in the fortunes of the *villae* the main clue to the early economic development of the country.

M. Flach's criticism is certainly not valueless. It puts us on our guard against the spirit of system which few readers of M. Fustel can have altogether failed to notice in his work. But it also suggests the remark that it behooves future workers in the field to start without

prepossessions and, as far as limitations of space will allow, to produce their own evidence in a shape in which it can be readily criticised. M. Fustel has evidently caused some exacerbation of temper by the rough treatment to which he has subjected certain respected teachers. But if his work is taken seriously, and personal animosities are forgotten, it will be clear that it is no longer enough to defend doctrines that have the support of revered names against what seems iconoclastic attack. The negative criticism of M. Fustel has gone too deep for this to be sufficient any longer. It is fresh constructive work that is now called for.

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Outlines of English Industrial History. By W. CUNNINGHAM, D.D., and ELLEN A. MCARTHUR. New York, Macmillan & Co., 1895. — 274 pp.

Dr. Cunningham, with the coöperation of Miss McArthur, of Girton, has furnished the second volume for the Cambridge Historical Series, for which Mr. Rose has already furnished the first. It is suggestive of present tendencies in historical writing that at Cambridge, at least, the word "historical" is interpreted to cover not only the economic aspects of history but also the historical aspects of economics. Dr. Cunningham's book admirably justifies this uncommon use of the word; for no one would pretend to-day to have mastered the history of England without a knowledge of its industrial and commercial development. In fact, industry and commerce have made England's greatness possible.

At first sight the reader may be tempted to think that the *Outlines of English Industrial History* is but an epitome, a kind of school edition, of the *History of English Industry and Commerce*, with the commercial aspects omitted. In this he will be mistaken; for the smaller work differs from the larger both in arrangement and in treatment. It is in no sense "written down" to meet the capacities of immature minds, although it is written in a simpler and more direct style. It also takes largely into account the commercial aspects of English economic life, although the title gives no indication of this. It is the sort of book that Dr. Cunningham could best write after the completion of the larger work because of the fullness of knowledge acquired and the better understanding of the proportions of the subject and the relations of the different parts. In that there is greater continuity of treatment and a clearer recognition of a definite line of

progress, the smaller work is an improvement upon the larger. In the latter we feel at times lost in the detail of the discussion ; in the former we see our way clearly from beginning to end.

The method of treatment is partly historical and partly topical, although each topic is treated historically and the reader is led by slow degrees historically forward. This progression carries him through the phases of the internal expansion of England, from manor to town, from town to the self-supporting nation, and from that to the nation drawing its subsistence from all parts of the globe and exercising a cosmopolitan influence. Whether the discussion be upon agriculture, money, fisheries, condition of the poor or any such topic, the reader is never allowed to lose sight of the main point — the industrial and commercial expansion of England.

In so small a book there is little opportunity to discuss debatable questions. Yet Dr. Cunningham reviews everything afresh and presents a number of interesting conclusions. He rejects the Roman origin of the manor, but is inclined to accept as a starting point a body of serfs or some kind of voluntary association — a conclusion no more satisfactory than the other. He does not commit himself on the question of the security or insecurity of the villein tenure, not considering it of any economic importance. He defends mercantilism and the navigation laws on the ground that the advantages surpassed the disadvantages. He shows that there was reason in Charles I's demand for ship-money, and argues that the depression and poverty of the laboring classes after the Napoleonic war were not due even chiefly to the introduction of machinery. What he says of the growth of joint-stock companies and the ousting of private firms (page 120) will hardly hold good in this country, where one-third of the banks are conducted by private firms.

On page 212 he speaks of the "uncertainties of the Napoleonic wars" and "the terrible depression which followed," and yet there is nothing said of the influence of the Continental System. Even the larger work has no account of the effects of this system on England, though it is difficult to see how the industrial history of this period can be appreciated without a discussion of this question. The strain upon England's resources in 1807-8 was only relieved by the Spanish war; bankruptcy was only averted by the opening of the markets of Central and South America; and the crisis was not passed until the system, turning on itself by the decree of October 9, 1810, compelled Russia to throw open her ports and declare for neutrality. Surely this economic crisis

is insufficiently appreciated by Dr. Cunningham. It was more injurious, it is true, to continental than to English industry, and yet a study of its effects at home is not only instructive but necessary. The increase of the manufacturing output, the bad harvests, the Luddite riots, the storing of stock at home, the commercial depression, the stagnation of business, the complaints of merchants and manufacturers leading to the modification of the Orders in Council in 1809, the speculation attending the sudden opening of ports in 1809 and 1810, — all these things can be best appreciated in their relation to the commercial situation as defined by the continental blockade.

After so long and thorough a study of the history of industry and commerce, Dr. Cunningham's conclusions regarding many modern problems are worthy of attention. He decries the destruction of the forests (page 19); questions the stability of England's present prosperity (pages 25, 89); believes in trade unions (page 106); doubts the advisability of state interference except in a limited degree (pages 107, 237, 238); considers competition an evil, with indispensable advantages (page 141); is willing to believe in bimetallism, but doubts if a standard more stable and less fluctuating than gold can be arranged (page 148); does not recognize the desirability of giving every laborer "three acres and a cow" (pages 232-233) — though he says nothing of the "eternal salvation" which Archbishop Przluski added in his promise to the Polish peasantry in 1848; is willing to agree that while free-trade is necessary for England, it does not follow that it is the best policy at present for America (pages 245-246).

I have said nothing of Miss McArthur's share in the writing of this volume. It is impossible to determine from internal evidence what that share is. She will doubtless be content with the honor of having coöperated in the production of so clear and suggestive a book.

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Die Sozialpolitischen Ideen Alexander Herzens. Von DR. OTTO VON SPERBER. Leipzig, 1894.

A very suggestive illustration of the effects of political persecution upon the spread of proscribed ideas is presented by the fate of Alexander Herzen. For well-nigh forty years his name could not be mentioned in the Russian press. The censorship succeeded in completely excluding the works of the great writer from the knowledge of

the new generation of educated Russians. But his ideas have, through the influence of his disciples, permeated the whole Russian literature of the "post-emancipation" period. Since in Russia literature is the only avenue of public activity open to private citizens and therefore the only channel for the expression of public opinion, a close acquaintance with a writer of so wide an influence is indispensable to any one who would study the present political situation of that country.

It was through Herzen that the teachings of Robert Owen and the French "utopian" socialists of the first half of our century found their way into Russia. Confined originally to a small select circle in the capitals (St. Petersburg and Moscow), the new doctrine very soon made its appearance in broad daylight, and through Tchernyshevsky was given a national mould. With Herzen and Tchernyshevsky the philosophical problem of socialism was - How shall the free development of the personality of the individual be guaranteed in a society based upon the principle of communism? (page 90). After the banishment of Tchernyshevsky his teachings underwent somewhat of a process of differentiation. The individualist side of the question was espoused by Pissarev and his school, who became prominent under the name of Nihilists and derived their spiritual ancestry from Proudhon. The communistic tendency, on the other hand, brought forth a quasi-religious and essentially idealistic movement under the leadership of Peter Lavroff. In the subsequent course of evolution it shaped itself into "peasantism," to use Stepniak's term, whereas the individualistic tendencies of the Pissarev Nihilism can be traced under the mystic mantle of Count Leo Tolstoi's anarchism.

It will be seen from this brief outline that "the social and political ideas of Alexander Herzen" cannot be studied without relation to the political and intellectual development of Russia for the past half-century. For such a study, the author of the book under review unfortunately lacks the requisite qualifications. His acquaintance with the theories and history of socialism is derived from secondary sources, mostly opposed to socialism, one will search in vain through the vast mass of footnotes for a reference to a socialist author. Although familiar with the Russian language, Dr. Sperber has studied Russian conditions from Baltic German authorities — the most one-sided of all foreign critics of Russia, because tainted at once with an ethnic bias and with an aristocratic prejudice against a democratic movement. Insufficient knowledge of modern Russian history and literature not infrequently leads the author into unpardonable

blunders, of which the following are examples : Among the "*Gesinnungsgenossen*" of Herzen and Belinsky, dreaming of "the federal-socialist republic of the future" (page 123), we meet Senkowski, who was in fact the chief literary sycophant of Czar Nicholas' régime, a writer venomous in his denunciations of all advanced thinkers of his day, from Pushkin to Belinsky. Katkov, the Anglomaniac and later the champion of bureaucratic centralization of the St. Petersburg Empire, is to Dr. Sperber "the leader of the Muscovite Slavophile party" (page 126). This merely repeats the common error of most of the European journalists, confounding the Slavophiles with the reactionary bureaucratic party; whereas in reality, the Slavophiles, with all their Muscovite "A. P. A.-ism," were a party opposed to bureaucratic centralization and sincerely attached to the principles of popular self-government. No better luck has Dr. Sperber with Bakunin. A German writer is expected to be sufficiently posted on the history of the revolution of 1848 to know that "the instigation of senseless conspiracies which Bakunin expiated by exile to Siberia" (page 130), was nothing but his dictatorship in the Dresden uprising. Arrested by the royal Saxon government and delivered to Austria, he was extradited by the latter to Russia and kept a prisoner in the Peter-Paul fortress at the precise time when, according to Dr. Sperber, he was in company with Herzen, Louis Blanc, Mazzini, Carl Schurz and other political exiles who sought refuge in London after the shipwreck of 1848 (page 26).

These are, however, minor errors when compared with such unfortunate remarks as that on "the aversion of the Russian people from so important a factor of economic life as agriculture" (pages 116, 117). One at all familiar with the Russian literature on the subject feels eager to know the authority for an opinion so strangely at variance with the accepted theory, that the whole complex of ideas, religious, political and economic, which dominates the peasant mind, springs from "the power of the earth" (*cf.* Pleb Ovspensky). The authority in question turns out to be the late Michael Katkoff, who, in an editorial in the *Moskovskiya Vedomosti* (*Moscow Record*) of 1865, holds the village community responsible for the "laziness" and "intemperance" of the Russian peasantry. One might as well take for authority on the present negro question an utterance of Robert Toombs in 1860.

This lack of accuracy entirely vitiates that part of the monograph which treats of the later period in Herzen's career, when, if we are to follow our author, Herzen's influence upon Russian society gave

way to the vigorous onslaught of Katkoff. In reality, however, while it is true that Herzen's personal influence began to wane in his declining years, it was due to anything but the philippics of Katkoff. How insignificant was the influence of this "*bedeutender Vertreter des russischen Nationalismus*" (page 116) everywhere save in governmental circles, appears from the fact that his were throughout the reign of Alexander II the only conservative periodicals, whereas a score of widely circulating and popular publications stood open to the disciples of Herzen, until finally the political and economic ideas of the latter gained universal acceptance in the press, — a fact of which ample proof is furnished by Dr. Sperber himself. Thus Herzen's ideas on the relation of the individual to society (pages 39, 40) and on law (pages 66–68), his skepticism with regard to representative government and "the utopia of popular sovereignty in a democracy" (pages 61, 64, 68), his opposition to politics (pages 77, 79), found their echo in the Pissarev school of Nihilism and, through the literary influence of that school, held full sway over the minds of Young Russia until the setback given by the political movement of the *Narodnaya Volya* (*The Will of the People*), 1878–1881. Herzen's views on the Russian village community as the bulwark against the development of capitalism and of a proletariat class (pages 88, 89, 102), have become the corner-stone of "peasantism," and, although refuted by the recent economic development of Russia, are still obstinately adhered to by all economic writers and by the whole press of the country.

While thus the critical part of Dr. Sperber's monograph must be considered a failure, full credit is due to him for the conscientious manner in which the ideas of Herzen are summed up in his compilation. As only a few of Herzen's works are translated into French or German, Dr. Sperber's monograph will serve a useful purpose and prove of considerable help to the foreign student of modern Russia who is acquainted with the works of Leroy-Beaulieu, Alphonse Thun, Plechanov and Stepniak.

I. A. HOURWICH.

L'Agriculture aux États-Unis. Par E. LEVASSEUR. Paris, 1894. — 492 pp.

It is easy to read Professor Levasseur's treatise on American agriculture without giving due credit to its eminent author. The style and method are so clear and simple, and the matter is so much the subject of vague every-day knowledge, that the casual reader may

scarcely notice the patient investigation and rare judgment that mark the book. The author modestly calls the book an *aperçu*, and it is true that it aims rather to give some consideration to every part of the subject than to deal at great length with any one part. The matter, however, is so judiciously chosen that the book leaves an impression of thoroughness as well as breadth of treatment.

The book is mainly descriptive. Beginning with a general consideration of such subjects as the conditions of farm life, the progress of agricultural methods, the rate of farm wages, the farmers' attempts at association, *etc.*, he passes in Chapters III–VI to a statistical treatment of the various products of the United States. The statistics are full without a great multiplication of figures, and are illumined by interesting comparisons. This part of the work, however, necessarily smacks of the catalogue, and will prove the least interesting to the ordinary reader.

Chapter VII is an admirable discussion of the different agricultural regions of the United States. Professor Levasseur makes a classification of his own, dividing the country into nine sections, and describes in turn the conditions peculiar to each section and the characteristics of the population so far as they affect its agriculture. The chief regret in regard to the book is that the author has not carried farther the tendency shown in this chapter to explain as well as describe the conditions of our agriculture. The book abounds in particular explanations and in most valuable reflections on different phases of the subject, but we miss a more general consideration of the social and racial causes that help determine the direction of agricultural production.

The latter half of the book deals with other sides of the question than the productive, and is, with Chapter VII, the most interesting. The methods of distributing the public lands and the effect of our policy in this direction are considered, and an excellent treatment of mortgages is given. While seeming at times almost too much impressed by the black accounts frequently given of the farmers' debts, the author concludes by showing the value of the mortgage as an indispensable instrument of credit, and characterizes it as "*le pont par lequel le colon a passé du prolétariat à la propriété.*" Interesting use is made of the census statistics of mortgage and ownership, but one regrets that part of the space might not have been devoted to their more complete analysis. The last two chapters in the book deal respectively with internal commerce and the export trade. Under the former head are given admirable accounts of the

elevator system, the stock-yards, methods of transportation, *etc.*, and of Chicago and Minneapolis as typical markets, while due credit is given to the speculative machinery of the grain trade for its important directive influence. Under the head of "*Commerce Extérieur*," the subject of competition in the foreign market receives suggestive treatment, and some final conclusions are given as to the future of American agriculture. The author predicts yet a prosperous career for our farmers and an important (though diminished) place in the foreign market, - but only by adaptation to new conditions. More intensive cultivation is declared necessary from now on, though the author is impressed by the amount of new land still available for the old methods of production. "*S'appliquer à produire avec économie en même temps qu'en abondance*," is his practical advice to the farmer, and one that corresponds well to the opinions of the most intelligent farmers themselves. Greater economy not only in production but in consumption is the chief thing needed, while by an extension of truck-farming and of the trade in manufactured food products (flour, canned goods, *etc.*) farming profits will be maintained. M. Levasseur still believes in wheat, however, as the great staple of food exports.

It is most satisfactory to welcome this able discussion of a subject so important to ourselves, and yet so little understood, as the economics of agriculture. The book presents so many sound judgments that we regret that the author did not give even freer rein to the expression of his individual opinion. It is interesting to note that while impressed with the *crise* in American agriculture, he ascribes little importance to the depreciation of silver or to the speculation in food-products as causes of the existing evils. At times the author seems to wander far from the subject of agriculture, but in doing so he gives us too much of interest to admit of complaint.

The sources of his information are extensive, including especially the official reports of the Department of Agriculture, and of the various state departments and commissioners. The treatise constitutes part of Volume 136 of the *Mémoires de la Société Nationale d'Agriculture de France*. It is preceded by a comprehensive "note" on American agriculture by the secretary of the society.

H. C. EMERY.

BOWDOIN COLLEGE.

Die Bevölkerung Oesterreichs; auf Grund der Ergebnisse der Volkszählung vom 31. December, 1890. Von DR. HEINRICH RAUCHBERG. Wien, Alfred Hölder, 1895. — Large 8vo, 530 pp.

The Slums of Great Cities. Seventh Special Report of the Commissioner of Labor. By CARROLL D. WRIGHT. Washington, Government Printing Office, 1894. — 620 pp.

Versuch einer Bevölkerungslehre; ausgehend von einer Kritik des Malthus'schen Bevölkerungsprinzips. Von DR. FRANK FETTER. Jena, Verlag von Gustav Fischer, 1894. — 97 pp.

The question of population is so fundamental in all social science that it is of perennial interest. The practical statistician, on the one hand, tries to illuminate his figures by some theory which will coördinate his facts; while the sociologist, on the other hand, seeks in statistics to find illustration of and support for his theoretical superstructure. The three works before us are of interest to both statistician and sociologist.

The object of Dr. Rauchberg's stately volume, according to the author, who was the active chief of the Austrian census of 1890, is to make the results of that census accessible to the ordinary student, especially one interested in the study of the social sciences. This has been done by the most thorough and scientific analysis of the results of the census, with especial reference to the political and social changes going on in the population. Detailed attention is directed to the question of migration, the growth of cities, the housing of the people and occupations and professions. The work is a model of what such an undertaking should be and reflects credit not only upon the author but upon the census itself, which seems to have been of a very thorough and detailed character.

The mere analysis of the Austrian census would not in itself be of sufficient interest to commend such a work to any but a small circle of American readers. The author, however, has treated his facts with such keen appreciation of the great questions of modern social development that the book becomes a repertory of inductive material for the sociologist. It will repay the latter, perhaps, to turn a moment from the study of primitive institutions to this scientific presentation by means of statistics of the changes going on in the constitution of a great modern civilized nation. It will be possible to indicate here only a few of the many interesting facts brought out.

The fundamental question in a growing population is the character of its increase. Rauchberg distinctly rejects the Malthusian

doctrine. He declares that while population has been increasing in Austria, the rate of increase is growing smaller and the increase is due to the most favorable cause, *viz.*, a diminishing death-rate. At the same time that population has been increasing at a slower rate, prices of food have been diminishing and wages increasing. The hektoliter of the principal kinds of food, which cost nine days' labor in the "forties" and seven days' in the "seventies," cost only five days' labor in the "eighties." The meaning of this is that population no longer follows the curve of bare subsistence, but is establishing a new "standard of living" for itself.

Austria, again, is just breaking away from the trammels of feudal customs and developing into an industrial state. One sign of this is the internal migration. The percentage of strangers in the commune was 21.3 in 1869; in 1890 it was 36.1. This migratory movement is principally from the country to the city. Thirty years ago only one-fifth, now nearly one-third, of the population live in places of 2000 inhabitants. Out of 100 persons engaged in gainful occupations, there had migrated, in agriculture 29, in industry 55, in trade and transportation 62, in public service and professions 66. The chief cause of this migration is the difference in the level of wages, and this subject is carefully analyzed. One evil that flows from it is the high rent and consequent over-crowding of tenements in cities, which have grown so rapidly that they have not been able to provide house accommodation. The great question connected with the phenomenon is whether the city populations will be able to assimilate these new elements without lowering their standard of life.

On the whole, Rauchberg is inclined to take an optimistic view of these changes in the modern industrial system. The number of independent farmers has decreased, although in industry the small enterprise still holds its own. Still the whole industrial life has become more intense; population breaks over its former narrow bounds; different elements of the national life are intermingling; the old social classes are disappearing and Austria is entering upon the modern socialization (*Vergesellschaftung*) of production. Such a movement will demand, indeed, a reforming of the administrative organization which was built up for a home-staying (*sesshafte*) population. One of the first steps in this direction is the organization of the market for labor; for the author fears most of all a lowering of the standard of life by the migration of the lower-paid laborers into the crowded cities. Emigration beyond seas he looks upon with great disfavor, declaring that it destroys the standard of life of the

new country by introducing cheap labor, while the emigrants, aided by virgin soil and machinery, compete with the home country so as to make conditions there more difficult. "Hier ein Verlust, dort kein Gewinn, beiderseits aber eine Gefahr." Seldom has emigration received harsher condemnation.

Space does not permit further citation of interesting points. Dr. Rauchberg's book is a brilliant example of the use of statistics as an instrument of investigation in sociology. If our sociologists could forget for the moment *Vaterrecht* and *Mutterrecht*, exogamous and endogamous marriages, *etc.*, they would find here some extremely interesting facts about social organization and evolution.

Commissioner Wright's special report on *The Slums of Great Cities* was prepared in compliance with a joint resolution of Congress, of July 20, 1892. The amount of \$20,000 appropriated for the investigation proved to be sufficient only for certain districts in four cities, Baltimore, Chicago, New York and Philadelphia, comprising a population of 83,352 persons. To take a similar census of the slum districts of the sixteen cities of two hundred thousand inhabitants each, as originally contemplated, comprising a slum population of probably 800,000, would have involved an expenditure of from \$125,000 to \$150,000. As the commissioner remarks: "It is somewhat doubtful if the results would be commensurate with the expense — that is to say, it may be that the results of the present investigation are sufficiently indicative of all the conditions without any further study."

An analysis of this report is of interest to the student of social conditions from two points of view. First, as to the actual results in throwing light upon the condition and character of the poorest portion of the population in our great cities; here the report will be indicative only. Second, as to the method employed in making the investigation, whether it was adequate and satisfactory, and up to the latest scientific requirements.

In respect to results, some of the interesting points brought out are as follows:

Who live in the slums? With the exception of Chicago, the colored population is less numerously represented in the slums than in the city at large. The foreign-born, on the other hand, are much more numerous in the slums than in the total population. The total foreign-born in the city of Baltimore is 15.88 per cent of the total population, but in the slum district canvassed it is 40.21 per cent. The figures for Chicago are 40.9 per cent for the city and 57.51 per

cent for the slums; in New York, 42.23 per cent for the city and 62.58 per cent for the slums; and in Philadelphia, 25.74 per cent for the city and 60.45 per cent for the slums. These figures are conclusive.

The analysis by nationality is much less conclusive because only a portion of the slum district in each city was taken, and in the well-known concentration of nationalities which characterizes cities the omission or inclusion of certain blocks (*e.g.*, Bohemian and Italian districts in upper New York) might easily change the proportions. The nationalities most numerous represented in the districts canvassed were: in New York, Italians 45.27 per cent; in Baltimore, Germans 23.9 per cent, Russians and Poles 9.04 per cent; in Philadelphia, Italians 24.15 per cent, Russians and Poles 23.2 per cent; in Chicago, Italians 16.7 per cent, Russians and Poles 17.07 per cent. These figures point unmistakably to the character of our recent immigration.

In regard to demographic characteristics the results are not particularly new. The number of males exceeds that of females; the size of family is slightly larger than usual in Chicago, New York and Philadelphia, while in Baltimore it is smaller; the proportion of married persons is larger in the slums than in the total population, — a fact that is due, probably, to the large proportion of the foreign-born. Illiteracy is heavy, occupations are varied, and physical ailments remarkably absent.

In regard to general social condition, we find over-crowding to be especially common in New York and Chicago, the number of persons to a dwelling being 36.79 in the former city and 15.51 in the latter. Sanitary condition was generally reported "fair" or "good," very seldom "excellent." The cubic space per individual in sleeping rooms was generally less than is desirable. The biological examination of the air of tenements showed a remarkable absence of bacteria.

The methods employed in this investigation seem to have been as thorough as the subject permitted. The examination of the air, the measurement of rooms and the analysis of sanitary conditions were rather novel. The comparisons in respect to vital statistics and criminality with the population of the whole city are not very convincing, because of the lack of general statistics. The results in regard to health seem to need confirmation. In fact, the whole subject is so complicated that investigations covering a smaller area, or the conditions in one occupation or among persons of one nationality,

will probably yield better results than these more ambitious undertakings. The "monograph" or the private investigation seems to be more in place here than the "census."

Dr. Fetter's essay on the theory of population appears as one of the publications of Professor Conrad's seminarium at the University of Halle. The first part is a critical examination of Malthus's theory of population, especially of his use of terms; and although the discussion is somewhat difficult to follow in its German dress, yet it appears that Malthus used his terms in many different senses, so that it is impossible to say that he succeeded in formulating a true law of population (page 44).

Of more practical interest is the author's excellent collation of recent statistics for the purpose of showing the movement of modern population. The marriage-rate is decreasing in almost all countries, and the birth-rate is also decreasing. Notwithstanding this, population is increasing, owing to a corresponding decrease in the death-rate. Any prospective check on population must be looked for in one of two directions, either in an advanced age at marriage, or in a smaller number of children per marriage. Statistics do not show that age at marriage is advancing. They do show that there is a tendency to smaller families, especially among the middle classes, who are actuated by the desire to maintain and improve their standard of life. The true check upon over-population is psychological. This thought is not new, but Dr. Fetter has supported it with some very ingenious investigations of the relative birth-rate between classes as exemplified by a great variety of statistics from Paris, Berlin, London, the United States and elsewhere.

RICHMOND MAYO-SMITH.

Coöperative Production. By BENJAMIN JONES. Oxford, University Press, 1893. — 550 pp.

This volume contains the completest statement yet made of the coöperation idea in England. The reader should keep in mind that Mr. Jones is the manager of the London Coöperative Wholesale Society. The ideal of this society is not that of the profit sharer or of the Labor Association, which promotes production-coöperation with partnership of the worker. If Mr. Maxwell, of the great rival Scottish society, had written this book, we should have had distinct emphasis upon "profit for the worker." Over this relation of the worker to the profits, a long and somewhat bitter fight has been waged. Year after year resolutions have been passed, such as that in Bristol, 1893, urging "the principle of copartnership of labor :

an essential of industrial coöperation." A few great leaders of the Christian-Socialist movement still attend the congresses to shape and urge such resolutions. These seem, however, only a respectful concession to the framers. The resolution is not kept nor is it meant to be kept by the great body of those who control the real business of coöperation. It is true that the Scottish Wholesale pays a bonus to labor (the London society abolished bonus in 1876) and comes distinctly closer to the hope of those who wish to make capitalists of the laborers. Yet it is all plain in this history that, so far as actual achievement is concerned, the form of ideal cherished by the Christian Socialists is losing its hold.

So far as this is denied, appeal must be made to the superiority and more hopeful condition of the Scottish Wholesale, which still keeps the welfare of the producer (as against the consumer) clearly in view. Bonus is now given to labor, as profits are given to the consumer. The Investment Society exists to bring the workers into the Wholesale as shareholders, and care is taken to make the investments of the Wholesale also cooperative investments. In a word the ideal of the Scottish society regards the worker as producer, making it possible for the laborer to become a shareholder and "capitalist." It wishes profits to go to him as a worker. Before the royal commission, Mr. Maxwell stated this as his "highest ideal."

Both the leaders of the English societies, Mr. Mitchell and Mr. Jones, place their emphasis, not on the producer, but upon the consumer. This difference is not without importance. The older idea would (as profit sharing does) help the *élite* workers. The newer and more socialistic idea is to raise the standard of living among the mass. The older writers, like Ludlow, laid stress upon the greater *moral* significance of production. Consumption was regarded as selfish, while production was unselfish. "the divine element in man is the productive one, the consuming element is the terrene," *etc.* It must be confessed that this moral distinction is not a helpful one. The more socialistic view lends itself quite as fitly to ethical fervors as the other — is indeed made the ground of a higher moral appeal. The very aim of this more democratic coöperation is "to eliminate all other motives in business except those that can be honestly recompensed." "Where production and consumption so work that profit on price is abolished, social utilities may exchange in such manner that none may rob another."

One sees in this volume a distinct growth of the more socialistic conception of distribution. Trade-unionism appears to have at least

a closer theoretical affiliation with coöperation and both show in their aim a growing unity with the ideal of the new municipal socialism.

The only misgivings felt by the reader of this admirable book is as to the treatment of coöperative production. The *Labor Copartnership* of August, 1894, shows the extent to which the copartnership idea *together with the sharing of profits and management* has now reached. The whole number of societies had grown from 15 in 1883 to 109 in 1893; the sales for the year from £160,751 in 1883 to £1,292,550 in 1893; profits in the decade had risen from £9,031 to £67,663. It appears too that the ratio of failures has fallen to a lower mark. The chief difficulty—not of manufacturing, but of finding a market—is said also to be diminishing. This is so far a hopeful realization of Neal's ideal, "of substituting in the busy world of industry united concert for antagonistic conflict, and thus making the ever-growing command over the powers of nature attained by man as conductive as they may be made to the well-being of the working masses, instead of leaving the wealth thus produced to be divided by a scramble."

JOHN GRAHAM BROOKS.

CAMBRIDGE, MASS.

Problemi Sociali Contemporanei. Di A. LORIA. Milan, M. Kantarowicz. — 131 pp.

In this volume Professor Loria has gathered seven discourses delivered in the early part of 1894 at the University of Padua. They were undertaken at the petition of a large number of students, who asked the distinguished author to expound in brief form the general doctrines of political economy. But political economy, as understood by Professor Loria, is a very large subject; and accordingly we have here a discussion of the fundamental questions of social organization and social development. The titles of the discourses, after the first and introductory one, are: Liberty, Property, Socialism, Social Darwinism, Evolution, and Revolution,—a list which indicates sufficiently how wide a range of general questions is covered.

The brilliant qualities of the Paduan professor appear once more in this slender volume: the wide learning, the skillful logic, the contempt of shams and indirections, the fervent advocacy of a better social system, the eloquent style. We can believe that crowds pressed to hear the lectures, and that they were published in response to urgent requests; nor will they fail to attain the object, which i

modestly stated in the preface, of stimulating among the author's countrymen a healthy discussion of the great problems of social organization. No layman can read these pages without being stirred to interest and inquiry, while even those who have made it their business to follow the literature of social speculation will not fail to find fresh thoughts and new points of view. Nevertheless, these are but popular lectures, covering the widest of problems in very brief space. It is not to be expected, as it is not pretended, that they should explain completely the author's own views. Still less is it to be expected that they should set forth any body of generally accepted conclusions.

The introductory chapter, and that next following, on "Liberty," paint in unsoftened tones the evils and inequalities of social conditions as they are. That on "Property" refutes summarily and incisively the theories which trace the institution to occupation, to labor, to force of law, or what-not; but, characteristically enough, says nothing of the simple utilitarian theory, which would weigh strongest in the minds of most economists. The historical sketch under "Socialism," could hardly be surpassed within the limits given; except, indeed, for the exaggerated praise given to Marx. In the chapter on "Social Darwinism," there is a somewhat easy confutation of current misapplications of the theory of natural selection to social phenomena. Finally, under the heading of "Evolution," the author's own views of the laws of social development begin to be unfolded; and in the closing lecture, on "Revolution," he points the road to the peaceful accomplishment of an inevitable social transformation.

Underlying all this, of course, is the ingenious doctrine which was set forth in the *Analisi della Proprietà Capitalista*, and which has evidently become more and more firmly fixed in Professor Loria's mind. To the present writer the theory of pristine equality and of free land, which is the foundation of this new philosophy, seems untrue to history and weak in logic; the application of that theory to the explanation of all economic and social development, seems forced and artificial; the "mixed association" under free land offers no solid promise of a social utopia. It is inevitable, therefore, that he should dissent from the conclusions summarized in the volume here under review. But such dissent is not inconsistent with a high respect for the learning and the ability of the author, or a cordial appreciation of the brilliant talents which he has again shown in this his last publication.

F. W. TAUSSIG.

HARVARD UNIVERSITY.

Aspects of the Social Problem. By Various Writers. Edited by BERNARD BOSANQUET. London and New York, Macmillan & Co., 1895. — x, 332 pp.

Here is a book of vigorous thinking born of actual experience in social fields. Its pages abound in sound sense, scientific insight and practical suggestion. There is a great deal in it of what many are now feeling after, that is, something to help them to define and grasp the social problem in its essential nature. From it we get the impression that the leaven of right thinking and feeling — the one condition of all genuine reform — is working its way through English life on matters social. If these contributions are really typical of the way in which social England is regarded by her writers, then one may rest assured that such men as Matthew Arnold and Huxley have had much to do with this result of disencrusting the social spirit and giving direction to the released energy of life in the social policy of the England of to-day.

Mr. Bosanquet, the editor of the volume, contributes six of its papers ; seven are by Mr. H. Dendy, two by Mr. H. M'Callum, and three by Mr. C. S. Loch. Of the eighteen papers comprising the book, nine have appeared in periodicals and nine are new. All are timely ; not a single one is used for padding. A sentence from the preface gives the key-idea of the book : " In social reform character is the condition of conditions . . . though it should be definitely recognized as the extreme of folly to despise the material conditions of life." The point of view common to all the writers is this, that to a great extent the social problem is the problem of the poor, and that they who work with and for the poor should enter into their thoughts and feelings so as to comprehend their lives from all sides. The first two essays by Mr. Bosanquet, on the " Duties of Citizenship," and the last three, on " The Principle of Private Property," " The Reality of the General Will " and " Socialism and Natural Selection," all help to unfold the social problem in its wider and deeper connections with other commanding issues. The author finds the historic character of citizenship given in the typical Greek communities of ancient times. The civic spirit, to which modern democracy is giving revival, is the domain of the common good, in the light of which it was the great duty of Hellenic citizens to adjust and exercise their lives. Instead of the simple and homogeneous community of the ancients the modern wilderness of interests has come, disturbing and breaking up the life of the state into a vast variety of corporate and social centers for which we have as yet found no simple principle of unity,

except that of law backed by the force of majority. This is our problem to find and live the type of life that is healthy and sound for the good of the community or state. In the other essays the editor does some encouraging work in social psychology. The chapters on "Character in its Bearing on Social Causation" and "The General Will" are suggestive of Wundt, and are both clear contributions to scientific sociology.

"The Industrial Residuum" is a study made on the spot. It deals with that type of character which is but an incoherent jumble of negative qualities — a mass of social wreckage. To define membership in this class of impotent folk, Mr. Dendy takes some fundamental characteristic of the individual, some disposition or habit which determines his industrial behavior. This characteristic he finds, not exactly as Marshall does, in the incapacity to do "a good day's work," but rather in an insuperable aversion to continuous work, shown by the disposition to "drop out" — a condition favored, though not necessarily caused, by the existence of "busy seasons" or industrial spurts in special occupations. Another characteristic is a low order of intellect, unreliable as to its information about even the commonest facts of life; finally there is always present a degradation of the natural affections, marked by absence of all feeling of responsibility between parents and children and brothers and sisters. This analysis is accompanied, however, by an abiding confidence on the part of the author in the social arrangements in which these incapables believe and manage to exist. Another study of Mr. Dendy's is a valuable aid to our understanding of the real social situation. His "Children of Working London" might be taken as a model report for a legislative committee. It is a brief, luminous, suggestive presentation of a mass of facts. The author begins by observing children in five or six back-yards in a block of workingmen's dwellings, from which he enters fully into the real life of childhood among the laboring classes of the chosen block. He finds its sources of enjoyment, its indifference and its misery — why it fails and wherein its shortcomings consist as a social element. In this light he criticises the schools, the sanitary policy, the factory employers and inspectors, so far as they conduce to this result.

The two contributions of Mr. M'Callum, on "The Protection of Children" and "Some Aspects of Reform," are both historical and critical. In the latter we have something solidly hopeful. The wholesome faith asserts itself here, as throughout these papers, that after all our devisings "to do something" for those who have fallen

short in the struggle for existence, the family life of the English people is still the ark of the sanctuary, and that the hope of social betterment lies in strengthening the resources of this mainstay of social independence both from within and from without. This, in brief, is the creed of the new, yet old, reform of which this book is a positive exponent.

As illustrative of methods of sociological investigation these essays are an earnest of the good results that come from a study of types as the means of insight into attending conditions. One of the best examples is Mr. Loch's paper on "Returns as an Instrument in Social Science." This gives the first clear indication of the right way of escape from too confiding reliance on statistics as our main instrument for social investigation. The elaboration of the type by the descriptive study of important cases has long been the method of the naturalist, and it is bound to triumph in sociology if logic and observation have anything to say to it. This is the method by which all the most valuable studies in this volume have been worked out — by the method of types, which is primary, rather than by the method of statistics, which is secondary in social science.

All these papers indicate familiarity with current literature and programs of reform in England. Several papers treat quite fully of the leading practices and proposals in public notice relative to private charity and public relief; the central theme of discussion is still the Poor Law; "Marriage in East London" is a study with a ghastly aspect; "Women's Position in Industry" is a summary of conditions brought out by the report of the Royal Commission on Labor. The various plans for old-age pensions are ably discussed by Mr. Loch. The preventability of old-age dependence is shown to be increasingly practicable even as things exist. The whole issue is declared to lie between the historic policy of social independence as the end of pauper administration, and the policy of social dependence of a possibly increasing class through any scheme of pensioning. The former relies on a preventive condition of personal character, family connections and the workhouse to check and cure the evil; the latter on quick, costly expedients, in the use of which we have no experience.

Taken altogether, the book is a competent summing up of the social problem as the last few years have developed it in English experience, from the conservative but intelligent and sympathetic worker's point of view.

JOHN FRANKLIN CROWELL.

COLUMBIA COLLEGE.

American Charities. A Study in Philanthropy and Economics.

By AMOS G. WARNER, Ph.D., Professor of Economics and Social Science in the Leland Stanford Jr. University. New York, T. Y. Crowell & Co. — 430 pp.

Thirty years ago one would not have thought that philanthropy and economics could have any dealings with each other. As then generally regarded, political economy was barely human, and the farthest possible from humane. To pity was the first function of humanity; to profit, the business of economics in practice. At the present day, however, it is next to impossible to keep philanthropy and economics apart in any discussion of social affairs.

From the sub-title of Professor Warner's book one might expect philanthropic conduct and feeling to be treated co-equally with the economic interests of society. But we find on examination that the main title means that neither philanthropy nor economics is treated here, but that these two polar impulses — the philanthropic and the economic — define the limiting points of survey within which an excellent study of pauperism in the United States is made. The causes, the classes, the revenues and the relief systems of American pauper life comprise the four parts of this very compactly written book. There are thirty-three tables of statistics, most of them explained in the body of the text. The author takes creditable care to interpret these figures so as to mislead no careful reader as to the importance to be attached to them. Most of the chapters are prefaced by a condensed paragraph of bibliography. The tone of the writer is none too confident, nor too critical, yet is healthfully hopeful.

The methods and the materials of such a book are of great interest to the student of social science. Yet the author seems to have had the administrative interests mainly in mind throughout its preparation. The classification of causes of poverty which Dr. Warner outlines in a schedule of eighteen different influences, under the two divisions of subjective and objective, would be improved, I think, if the divisional heads were cut off. Personality and conditions of social existence are the only two scientific grounds from which sociological conditions can safely be considered. This is the virtual assumption underlying the exceptionally well-digested chapters (III, IV) on individual and social degeneration, as the ulterior conditions of pauperism and dependence. The theoretical portion of the book closes with a chapter on "Charity and Human Selection." I am not quite sure what sociological postulates

are taken for granted throughout this discussion of pauper phenomena; but I gather that the result — pauperism — arises out of the conditions of individual and social degeneration, and that back of all this lies the dominating process of “human selection.”¹

The eight chapters in Part II on “Dependent Classes” contain the gist of the book as an analytic study of existing conditions, apart from the financial aspects of the problem. For the American almshouse the author has little good to say. Three evils are pointed out as fatal to its efficiency: inadequate classification of inmates, laxness of admission and discharge, lack of a work-test. This view, I think, is historically defective. Without denying the full pertinency of this negative criticism and the fact of many disgraceful abuses — and no American institution has escaped its share of abuses — the almshouse system in the older states, considered apart from its connection with cities for whose use it was never really intended, has not by any means failed in its legitimate function — the care of the worthy poor. Practically all adverse criticism has been based on administrative perversions of the system, which have turned the almshouse proper into an asylum for the insane, a den of dissolutes and a tramp-trap. This condition, together with the dependence of the almshouse upon the local magistracy under the fee-system of commitments, has gone far enough to break down one of the soundest of American institutions — the county almshouse conducted on an agricultural basis. The testimony of experience, particularly of municipal and other supervisory experience, is arrayed against outdoor relief. Six states, however, spent over two and one-half millions in out-relief in one year, so that there must be another side to the question. Wider inquiry will no doubt show that the *system* of relief is not the real source of defective administrative results, but rather the *social conditions* which create and sustain relief-systems.

On the unemployed, the conclusion is reached by Dr. Warner that relief as a remedy in trade depressions should be given after due investigation, on a productive basis as far as possible, and through work which might be done at low rates on business principles. With the homeless poor, the remedy of experience lies in the indeterminate sentence in the house of correction for habitual vagrants and drunkards, in the way of which stands our “infamous system of county jails.” For the ordinary wanderer there is really no remedy save the lodging-house, the work-yard and investigation. Labor colonies and vagrancy are carefully examined and results summed

¹ I would suggest *selective survival* as a safer term for this use.

up; though I find no reference to the experiments in Australia, whose kindred social situation ought to make her experience more directly helpful to us than that of continental European communities. The chapter on dependent children is a healthful piece of exposition, showing the decided advantage of getting children into family keeping, as against the pernicious system of wholesale rearing in institutions.

No portion of this book is more timely than Part III, on "Philanthropic Financiering," treating of public charities, private charities, endowments, and subsidies to private charities. Part IV, on "Supervision, Organization and Betterment of Charities," treats mostly of methods and more recently developed features in organization. The chapter (XIX) on the organization of charities is probably the best study to be had on those voluntary agencies which in the larger cities have come to the rescue and the reformation of the older systems of relief within the past fifteen years.

As a survey of American charities the book deals too exclusively with the conditions from the side of the few great cities, leaving comparatively out of account the population of the vast rural domains and the smaller towns in which conditions and methods, as well as results, often teach a different lesson. On this account one great cause of poverty seems to have entirely escaped the writer's attention, namely, the necessary loss to personal capacity by the transfer from rural to urban conditions of life, especially in the case of the young, but generally of all ages. It is not a collapse, but rather what geologists would call a "fault" — continuity on a somewhat lower moral plane, by a let-down through absence of sustaining social conditions. Comte noted this as a preeminent fact. It is not lubricity; nor is it disregard of family ties, it is the inevitable outcome of social transplantation. This sociological law of "personal discount" incident upon circulation in a new social medium, taken in connection with the strong urban movement, would explain a vast amount of pauperism in cities which the author's analysis (page 28) does not seem to include. He deals almost wholly with conditions in twelve or fifteen American cities only, nearly all of which have a population of a quarter of a million each. The other 3700 cities and villages in the United States, having populations from over 200,000 down to 1000, doubtless have evolved much valuable experience that equals, if it does not exceed, in scientific importance that of the dozen leading cities for whose experience the work speaks so ably. In short, the author's treatment of the broad subject of American

charities, while scientifically sound as far as it goes, is logically defective because it excludes from treatment too large a portion of the actual content of the subject. For municipal pauperism or charity comprises a subject of quite recent development compared with the older historical conditions. It is too much the habit of the times to write and reason about things American much as the English tourist does — as if this country had little in it except a score of cities connected by railroads running through nowhere. Dr. Warner deserves thanks for what he has done in this volume, but he has only touched the vast theme of American charities in a few badly infected spots.

JOHN FRANKLIN CROWELL.

COLUMBIA COLLEGE.

Natural Rights. A Criticism of Some Political and Ethical Conceptions. By DAVID G. RITCHIE, A.M. London, Swan Sonnenschein & Co.; New York, Macmillan & Co., 1895. — xvi, 300 pp.

Professor Ritchie's work conforms very faithfully to the purpose which he says animated its production, namely, "to expose confusions, to set those people thinking who can be induced to think." No more promising field is to be found for the writer whose aim is the exposure of confusions than the literature of "natural rights." Of all the opportunities offered Mr. Ritchie has made excellent use. The spirit in which he takes up his subject is broad and philosophical; his method of treatment is clear and logical; and in his style the lapses from dignity are far less numerous than in some of his earlier writings.

The plan of the work presents, first, a general historical and critical treatment of the theory of natural rights, and second, a detailed discussion of particular natural rights. Under the first head, the history of the theory and the history of the idea of "nature" in law and politics are accurately and suggestively reviewed. The mere colorless narratives are fatal to the creeds which *a priori* thinkers have based upon the terms involved. After what seems a superfluously elaborate chapter on "Rousseau and Rousseauism," and an excellent analysis and classification of the different senses in which the term "nature" appears in philosophy, Professor Ritchie, in answering the question "What determines Rights?" exposes the underlying principle of his own philosophy. He advocates the doctrine of "evolutionary utilitarianism." "Natural rights" he concedes a philosophical sig-

nificance only in the sense of "what ought to be in an ideal society." The test of what ought to be is social, not individual, utility — "account being taken not only of immediate convenience to the existing members of a particular society, but of the future welfare of the society in relation, so far as possible, to the whole of humanity." And in anticipating a very obvious criticism, he adds :

If it is argued that such an appeal is at least as ambiguous as a mere reference to natural rights, I answer, No : for in appealing to social utility we are appealing to something that can be tested, not merely by the intuitions of an individual mind, but by experience. History is the laboratory of politics. Past experience is indeed a poor substitute for crucial experiments ; but we are neglecting our only guide if we do not use it. This means no slavish copying of antique models, but trying to discover, from consequences which followed under past conditions, what consequences are likely to follow under similar or under dissimilar conditions now. [Page 103.]

I am not prepared to say, after a careful study of the chapter under consideration, that Professor Ritchie has laid down a wholly satisfactory foundation for his polemic ; I am not sure that he securely bars the way to that conception of the state as an end-in-itself in which such a quantity of dreary discussion is immanent ; but I do feel that in the passage quoted, reënforced as it is by many other passages in the book, he is on the firmest ground that a philosopher of politics can occupy.

The second part of the work takes up *seriatim* the rights of life, liberty, property, *etc.*, that have figured as "natural," and illustrates exhaustively the futility of the *a priori* view of them. The relativity of rights is the fundamental principle of the criticism ; and of especial effectiveness is the author's exposition that, back of all the individualistic theories about rights anterior to the state, there is an inevitable implication of a degree of social order that only political organization can explain. So, in examining the Kantian and Spencerian formula of justice, which has had such a vogue, Mr. Ritchie says :

The principle of equal freedom, if taken as the ultimate basis on which the fabric of law and government is to be built up, would either compel a complete abstinence from all action on the part of every individual . . . or it would mean the equal right of every one to do everything in the sense of Hobbes, *i.e.*, the war of all against all. The intermediate meanings, which *seem* to make the principle of equal freedom a plausible account of what justice is, all presuppose an orderly fabric of society in which the rights of individuals are settled for them by a fixed system of law. [Page 147.]

It is unnecessary to follow in detail the discussion of the different "rights." The book is valuable because its whole object and effect is to throw aside vague abstractions and pin debate down to definite, intelligible questions. The problem of toleration, the problem of the liberty of public meeting and association, the problem of the sanctity of contract—all are treated as soluble not by any universal principle of *a priori* right, but by considerations of particular time and particular place, and with reference to the experience of the past. There may be in this method a negation of ultimate philosophy; but the loss of a philosophy incompatible with this treatment of political problems will not be serious.

WM. A. DUNNING.

Cases on Constitutional Law. With notes by JAMES BRADLEY THAYER, LL.D., Weld Professor of Law at Harvard University. Cambridge, Charles W. Sever, 1895. — Two volumes, xxii, 2434 pp.

Not much can be said in review of a law book which is simply a collection of cases, with notes quoted from other books, especially if the selections and quotations are made with excellent judgment and rare discrimination, and are arranged in perfectly logical order. What can be said in commendation of such a book must be said of Professor Thayer's *Cases on Constitutional Law*. The need of such a work has long been felt by the teachers of American constitutional law, and Professor Thayer's collection will be welcomed by them as a most substantial aid. The students of constitutional law in our universities can hardly be expected to possess the original reports of these cases, on account of their great cost. Professor Thayer's book will put the chief cases into the hands of every student at a very moderate expense. In accomplishing this he will have done a very great service, for which all students of constitutional law owe him their grateful acknowledgment.

I have but one fault to find with this otherwise most excellent work. It is the omission of the arguments of counsel. Young students find it extremely difficult, and experienced students do not find it always easy, to distinguish decision from dicta in the opinions of the courts. If it is not known what points were argued, the reader is all the more liable to mistake the points decided. In my own experience as a teacher I find it more satisfactory to have fewer cases, with the arguments of counsel, than more without them. If Professor Thayer would give us three volumes and include the arguments, I think his work would be even more serviceable and more generally used than in its present form.

JOHN W. BURGESS.

Outline Study of Law. BY ISAAC FRANKLIN RUSSELL, D.C.L., LL.D., Professor in the University of the City of New York. New York, Strouse & Co., 1894. — 8vo, 280 pp.

A writer who takes all law for his province and who attempts to present its leading principles in the compass of one thin volume deserves lenient judgment. Rules laid down without qualification and definitions given without explanation are easily attacked; but with a book of this sort the attack should be confined to statements that are either clearly wrong or almost inevitably misleading. Into the one or the other of these classes, unfortunately, fall many of the author's dicta concerning legal history and foreign law. When, for example, he declares that the *fideicommissa* of the Roman law were "grants" originally made for the purpose of evading the strict rules of descent (pp. 84, 94); when he says that, by adoption, a Roman son might transfer his "domestic allegiance . . . to a *paterfamilias* of his own selection" (p. 92); when he affirms that the Roman law demanded a consideration for a promise, and identifies the gratuitous promise with the *nudum pactum* (p. 170); and when he assigns to the "improper" feudal tenures, "where the return made by the tenant was a money rent or agricultural labor," a later date than that of the tenures by military service, — he is clearly wrong. When he treats *usus* as "possession under the statute of limitations" (p. 98); when he distinguishes the *tutor* as "guardian of the person" from the *curator* as "guardian of the property" (p. 123); and when he says that "*emphyteusis* may have been a clear case of feudal grant" (p. 213), — his statements are likely to produce grave misconceptions. His declarations that "the public law of nations is not older than the *De Jure Belli ac Pacis* of Hugo Grotius" (p. 15), and that "the most famous of modern codes are the Code Napoléon . . . and the Code of Louisiana" (p. 13) are hard to account for, unless the first be taken as a bit of rhetoric and the second as a piece of American chauvinism. The assertion that "heathen nations are strangers" to the code of international law (p. 16) is probably an historical reminiscence; but the statement that "in Germany much of the public administration which we entrust to the judiciary is assigned to the army" (p. 42) is one for which it seems impossible to account.

His presentation of existing Anglo-American rules is often misleading, either because his statements are too general or because his language is inexact. Speaking of conflicts of law, he declares, without qualification, that legal capacity is determined by domicile and that personal property has no *situs* (p. 21). If but a single phrase

could be devoted to each class of questions, it would be more exact to say that legal capacity is determined by the *lex loci actus*, and that personal property, except where it is regarded as an entirety or estate, is governed by the *lex situs*. His statement that "a contract not to sue is void" (p. 166), and his remark, three pages further on, that the defendant may legally "buy his peace" from an impending law-suit, may well seem, to a beginner, flatly contradictory. It should have been made clear that the first rule applies only to a future cause of action. His statement, in the chapter on divorce, that in New York there is "a statutory presumption of death resulting from absence, *unexplained*, for five years" (p. 110), might lead the lay reader to imagine that desertion without reason stated would break the bond of marriage. The assertion that both descent and distribution, in case of intestacy, are governed by consanguinity (p. 144) leaves it unclear why the widow should have any right of succession. The definition of an implied contract as "one dictated by reason and justice" is scarcely as definite as might be desired.

The author's attempts to account for past and present rules of law—to define the public policy on which they were or are based, are not always happy. It seems unfair to married women and foreigners to rest the legal disabilities of coverture and alienage, as he does on p. 125, on "defect of mind." *De lege ferenda*, a somewhat surprising suggestion occurs on page 267, *viz.*, that Anglo-American law ought to recognize the crime of rape "in cases where the female is the aggressor." The hypothesis seems irreconcilable with the previously unchallenged dictum of Justice Fielding, in the case of Joseph Andrews. In one instance, however, Dr. Russell has really reached the root of the matter, and sets forth a great truth with much simplicity, when he explains, on page 104, that "apart from sentiment, the legal function of matrimony is to fasten upon the head of some one man the burden of the support and education of the young."

Dr. Russell's general view of law is that of the English positivists, modified by an acceptance of the historical idea as set forth by Maine. Methodology does not interest him. "For useful purposes," he says, "the alphabetical method of classification admits of little improvement" (p. 11). For his own purposes, he follows, in the main, the arrangement of the Gaian Institutes and the Code Napoléon.

The reviewer of this work has endeavored to avoid captious criticism, and to give full weight to the defense of lack of space and

consequent necessity of compression. It must be said, however, that the writer has practically estopped himself from using this plea by his frequent excursions into non-legal fields. In such a compendium it is somewhat surprising to find him straying, and often for some distance, into such matters as the services of Thomas Paine to the cause of American independence, the military history of our Revolutionary war, the economic effects of slavery, and the theory and practice of the gerrymander. His observations upon these subjects are always interesting and usually true; but one closes the book with an involuntary recollection of Dr. Johnson's description of a Scotch dinner — "fine miscellaneous feeding."

MUNROE SMITH.

Chapters on the Principles of International Law. By JOHN WESTLAKE, Q.C., LL.D., Whewell Professor of International Law in the University of Cambridge. New York, Macmillan & Co. — 8vo, 275 pp.

This book, as the author says, "is not a detailed treatise on international law, but an attempt to stimulate and assist reflection on its principles." Like Sir Henry Maine's collection of essays on the same subject, it may be considered as a special product of the Whewell professorship; and it is to be estimated as a collection of essays rather than as an attempt at a systematic work.

The first five chapters are devoted to a cursory examination of the nature of international law, and to a sketch of the historical growth of the subject. Something is said of the writings of Ayala, Gentilis, Grotius, Bynkershoek, Wolff and Vattel, and a chapter is devoted to the effect of the Peace of Westphalia, and to the position and influence of Pufendorf among publicists. In this part of the book no feature is presented that seems to require special comment or criticism. It relates to matters often discussed by other writers, and was intended and composed, as the author intimates, "in part performance of a professor's duty to his university."

From the ninth chapter on, various interesting questions of international law are discussed in a clear and forcible manner. The first of these is the question of territorial sovereignty, especially with relation to uncivilized regions — a question, it may be said, of much less importance to the inhabitants of those regions than to the civilized powers whose present and prospective claims may depend upon the effect to be given to discovery or to occupation, or to native treaties and titles. In the award of the Pope in 1884, in the

dispute between Germany and Spain touching the Caroline Islands, much force was given to the claim of title by discovery, though in modern times little deference has been paid to claims of that character. Nevertheless, discovery was the sole basis of many of the old Spanish claims. In this relation Professor Westlake observes that the "titles which Portugal and Spain first claimed over the eastern and western worlds were not founded on discovery, but on papal grants." Yet, it is also true that the papal grants recognized, and to a certain extent were based upon, the idea of title by discovery. The bull of Pope Alexander VI, of May 4, 1493, which divided the world by a meridian traced a hundred leagues west of the Azores and Cape Verde Islands, provided that all lands discovered east of that meridian were to belong to Portugal, and west of it to Spain. But the Protestant powers of Europe refused to acknowledge not only the authority of the Pope, but also the effect of mere discovery, which was sufficient to confer title under the papal grants.

In a chapter on the rise of the Empire of India, and the relation of that empire to international law, Professor Westlake traces the decline of the native princes as international powers, and concludes that "the native princes who acknowledge the imperial majesty of the United Kingdom have no international existence." The dominion exercised by England is more than a protectorate. It is in reality an unlimited power of control, always ready to be exercised to any extent which the interests of the United Kingdom may demand. In some respects the position of the native inhabitants is similar to that of the American Indians. Like the latter, they are treated somewhat as "domestic dependent nations," and they do not possess the rights of British subjects unless they have undergone some process of naturalization.

In regard to the question of exempting private property at sea in time of war from belligerent capture, Professor Westlake, though he does not seem to have formed very strong opinions on the subject, closes his discussion of it by saying :

The true conclusion appears to be that a real cause, when such may exist, for desiring the detention of the enemy's sailors and ships in order to prevent invasion or the loss of our naval supremacy, is the only adequate motive for maintaining the present practice ; and that at the commencement of a war England should offer to her enemy to enter with him into a convention, determinable by either side on short notice, for mutual abstention from maritime capture except under the heads of blockade and contraband.

J. B. MOORE.

A Constitutional History of the House of Lords from Original Sources. By LUKE OWEN PIKE. London and New York, Macmillan & Co., 1894. — xii, 405 pp.

Mr. Pike's book is a valuable contribution to English constitutional history. Apart from the development of the House of Lords, it throws light upon various other subjects, notably the history of titles of nobility, the central courts, the privy council and the prerogatives of the crown. The opening chapters deal with the history of titles of honor from the Roman period to modern times, including the relations of the nobles to the Witan, to the councils of the Norman kings, and to the later parliament and privy council. Much attention is devoted to the history of earldoms and baronies. Later chapters contain a scholarly account of the rights, privileges and functions of the House of Lords, especially their judicial and legislative functions; and finally the changes in the component parts of the House of Lords in modern times are considered in detail. The following are some of the principal points emphasized by the author: that the earldom was regarded primarily as an office long after the Norman Conquest, while the barony depended upon territorial possessions; that the doctrine of the creation of an hereditary peerage by the summons of a person to parliament, without any mention of his heirs, is of much later growth than the reign of Edward I, and was not fully established until the sixteenth century; that the summons to parliament was a liability of tenure, and was regarded as a burden until, with the introduction of new ranks in the peerage, the struggle for precedence made it a privilege; that the prelates were peers only by virtue of their temporal possessions, and that they lost their right of trial by peers owing to their claim to be exempt from all secular jurisdiction.

Some portions of the work are marred by a lack of clearness, due in part to the use of vague terms which had various different meanings. For example, the use of *curia regis*, especially in Chapter IV, is very confusing; it is often difficult to ascertain whether the author uses this term to mean a large assembly of tenants-in-chief, or an inner circle of great officials, or a definitely organized court. Again, when he mentions the council, he does not clearly indicate whether it is the great council or an inner council. In reading Chapter IV, one is quite bewildered by the array of courts and councils to which the author refers without attempting any definition of terms. This vagueness appears in other portions of the book. In Chapter IX, for example, arguments are advanced to show that a prelate was only

a lord of parliament, and not a peer ; but the distinction between a lord of parliament and a peer is not made manifest until we reach a later chapter. In Chapter X much is said regarding the right of trial by peers ; but we are not informed how the court which tried such cases was constituted, especially in the early period before the House of Lords appears as a separate body.

Mr. Pike's attitude toward the researches of others is not to be commended. He exhibits a determination to write his book entirely "from the original sources," to deal with every question *ab ovo*, and to ignore the work of his predecessors. He does not indicate which of his results are new ; a novice might indeed infer that all of them are new, and that no part of the subject had ever before been investigated. In speaking of the privy council he does not refer to Dicey or Palgrave ; in his chapter on the central courts he ignores Maitland's admirable introduction to the *Select Pleas of the Crown*. In dealing with the question of the early financial relations of towns to the crown he gives references to the patent rolls, which do not prove his statements ; he would not have gone astray on this subject, if he had made use of Stubbs. In like manner he neglects the views of such writers as Hallam, Freeman and Gneist.

In Chapter IV he tries to show that the courts of King's Bench and Common Pleas were already established in the reign of Henry II, but his arguments are not convincing. Stubbs contends that the appointment of the judicial committee of 1178 marks the creation of the King's Bench ; Pike maintains (without referring to Stubbs's views) that this committee was the court of Common Pleas. What Benedict of Peterborough, our chief authority, says regarding this matter, is more in accord with Pike's theory than with that of Stubbs ; but there is no clear indication that either court was definitely constituted in 1178. That year seems merely to mark the beginning of a process of differentiation or development which later on led gradually to the establishment of these tribunals.

The question of the separation of the two houses of Parliament is summarily disposed of in Chapter XIV. Mr. Pike says :

Regarded from one point of view the question seems almost insoluble ; regarded from another it is extremely simple. It is difficult to prove when a permanent physical barrier was set between the two houses ; it is easy to show that the two assemblies were always distinct. The *Curia Regis*, or King's Court, the King in his Parliament of a somewhat later time, never included the Commons. The great officers of state and the judges were summoned to it and sat among the Lords Spiritual and Temporal, but the

representatives of the Commons, or, at any rate, the burgesses, never intermixed with them. It could have mattered but little whether the Commons, who in the early stages of Parliament appear chiefly as petitioners, formulated their petitions at the bottom of a hall, while the Lords were at the top, or in one chamber or building, while the Lords were in another. No wall could make the two bodies more distinct than they already were in nature.

I believe that this question has more importance than Mr. Pike ascribes to it, and that more light will be thrown upon it by future investigation.

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Select Statutes and other Constitutional Documents illustrative of the reigns of Elizabeth and James I. Edited by G. W. PROTHERO, Fellow of King's College, Cambridge. Oxford, at the Clarendon Press; New York, Macmillan & Co., 1894. — 464 pp.

In looking over Professor Prothero's work one wonders that it has not been done before—an indication that the book has an obvious place to fill. The volumes of Stubbs and Gardiner have left untouched the periods from Edward I to Charles I and from Charles II to our own time. The present volume fills an important portion of one of these gaps, and no doubt we shall soon see the documentary narrative completed.

Mr. Prothero has done his work with great care. He not only gives official documents but also quotes the political and ecclesiastical writers whose opinions are likely to throw light upon the development of the constitution. In this respect his work is more comprehensive than that of either Stubbs or Gardiner, and it will save the student of the reigns of Elizabeth and James much weary searching amongst scattered material.

Ecclesiastical matters play a great part in the constitutional history of the time. Henry VIII had already been "king with the Pope in his belly," and his daughter claimed every prerogative of her father. In politics she asserted that the Parliament "should do well to meddle with no matters of state but such as should be propounded unto them" (page 119). In religion she expressed in vigorous terms her resolve not only to crush Romanism, but also not to tolerate "new-fangledness" (page 222). This latter determination was full of ill omen to the Puritans, and readers upon this side of the Atlantic will be interested especially in this struggle. The reign of Elizabeth

is indeed the most vital in the whole of English history to the religious life of the nation. Henry VIII might break with the Pope and crush the monasteries, but Mary could still restore Catholicism. It was really under Elizabeth that the decisive struggle took place. No character has suffered more than hers from the rigor of modern historical inquiry. Yet one doubts if she can have been the vacillating woman that she is now pictured when one sees with what unchanging severity she tried to crush the Puritans and that it was probably her personal influence that saved Episcopacy. It was she who urged on Whitgift to the congenial task of harrying the sectaries. Says Camden :

Huic [Whitgift] Regina (quae ut in politicis, ita et in legibus ecclesiasticis nihil unquam laxandum censuit) mandavit, ut ante omnia disciplinam ecclesiae Anglicanae et uniformitatem in sacris autoritate parliamentaria sancitam restauraret [page 210].

The Puritans could not escape either in England or from England until the laxer days of James, when some of them got away to the religious toleration that Holland offered, and ultimately to America. It would indeed have required great magnanimity to allow them any measure of liberty in England. When the Court of High Commission, with the authority of an act of Parliament behind it, was enforcing the bishops' jurisdiction, Chark, a Puritan clergyman, said publicly in St. Mary's at Cambridge: "Isti status episcopatus, archiepiscopatus, metropolitanus, patriarchatus . . . a Satana in ecclesiam introducti sunt" (page 197). Vigorous language was a characteristic of the time. Peter Wentworth complained in the Commons that imperious messages from the queen and rumors of her displeasure scared members from their duty. Then he burst out: "I would to God, Mr. Speaker, that these two were burned in Hell,—I mean rumors and messages" (page 120). Freedom of speech in Parliament was, as Mr. Prothero says, "a very modern institution in the time of Elizabeth" (page lxxxvii), but it was under the arbitrary Tudors that this and freedom of access and freedom from arrest became constitutional rights of the Commons.

The reign of Elizabeth is more important than that of James, and the interest of the latter is obscured by the intenser struggle of the succeeding period. Although the conflict between a claimed royal prerogative and constitutional liberty had already become acute, a real colonial movement as compared with the adventurous voyages under Elizabeth is the momentous feature of the reign of James. No doubt Mr. Prothero felt that the patents to the London and

Plymouth Companies in 1606 lay outside of his special field. Yet they were of vast moment to England and might well have found a place in the volume, if only in view of the later question whether the colonies were subject to the Parliament or only to the crown. It was surely, too, not unimportant to the government of England that a few years earlier the East India Company was organized, which was to add conquered kingdoms to the English empire. Yet Mr. Prothero gives no documents relating to these things.

The "Introduction" of one hundred and twenty-five pages is a reasoned account of the purport of the volume. The relations between the monarch and the people and between church and state, the functions of Parliament, the executive, the judicature, the army and navy and the prerogative all come under review. Sometimes the statements are a little too sweeping. "Had Elizabeth died before 1587, the disasters of the fifteenth century would inevitably have recurred" (page xviii). "The German Protestants once subdued and the Emperor's authority reëstablished, an attack on Holland and the northern powers must have followed" (page xxvii). "Had they [France and Spain] combined their forces, nothing could have saved English independence" (page xix). One is reminded of Mr. Lowell's hero: "He wrote no poem but if he did, he would have been . . ." Two of the predictions might have been fulfilled; the third is scarcely possible; but it is, in any case, gratuitous for the historian to assume the rôle of prophet. Mr. Prothero seems to think that the fervent expressions of the last act granting taxes to Elizabeth show a deep affection for her person. But we do not look for truth in addresses to despotic sovereigns, and there is sufficient evidence to prove that the nation had outgrown the Tudor system of rule and was chafing under it.

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BOOK NOTES.

VARIOUS difficult and complicated questions are involved in the essay entitled *Des Effets des Annexions des Territoires sur les Dettes de l'État Démembré ou Annexé*, by M. Henri Appleton (Paris, L. Larose, 1895). One of the first of these is that of the right of diplomatic intervention in behalf of the holders of national or public debts. Such intervention has often been conceded in an unofficial form, in the use of good offices, but it is always a delicate matter and it has several times been held by international commissions that official intervention in such cases is inadmissible. M. Appleton, on the other hand, strongly inclines to the side of intervention. As to the rule which should be adopted in the case of states annexed or dismembered, he maintains that there should be an equitable apportionment of the debt, if the state is dismembered ; or, if it is wholly absorbed, that the debt should continue to be a burden upon it. In view of the great increase of public debts in modern times, the questions discussed by M. Appleton possess a practical importance, and his essay forms an interesting contribution to their study and discussion.

All who have had to pursue investigations through the public documents of the United States are aware of the labyrinthine character of the task. An attempt was made to furnish a guide to searchers by the publication of Ben: Perley Poore's index to government publications. This work, however, fell far short of what was required. While it is incomplete, it is at the same time so defective in arrangement as to be almost useless to one who desires to be thorough. In the *Comprehensive Index of the Publications of the United States Government*, 1889-1893, by John G. Ames, Superintendent of Documents, Department of the Interior (Washington, Government Printing Office, 1894), we have for the period in question a carefully prepared and excellent index, constructed on an admirable plan. We hope that Congress will provide for the extension of this work of Dr. Ames to all publications of the government, from the beginning down to the present time, so that the public can gain access to the great mass of information now hidden therein.

No better text-book of republican principles and of American political science, nor any more important contribution to the political history of the United States, has ever been offered to the American

public and the world at large than the two volumes of *Lincoln's Complete Works*, edited by Nicolay and Hay (The Century Company). These speeches, papers and writings are now in a form to be put into every library, and no American citizen and no historian or publicist, American or foreign, can afford to be without them.

Dr. Charles Borgeaud's *Établissement et Révision des Constitutions*, already reviewed in this QUARTERLY, has been translated by Professor Chas. D. Hazen under the title: *Adoption and Amendment of Constitutions in Europe and America* (Macmillan, 1895). For the edition in English an introduction has been furnished by Professor John M. Vincent. The author has chosen those features of written constitutions which lend themselves most readily to comparative treatment and best illustrate political growth. His treatment of the origin of American constitutions would have been clearer, had he dwelt more on the political conflicts which intervened between the close of the Puritan period of New England history and the opening of the Revolution. These in part caused the prevailing fear of the unlimited power of Parliament which was expressed by the colonial leaders. As a protection against that they sought, wherever possible, to erect their charters into constitutions, or pseudo-constitutions. Out of these conditions arose the later constitutional guarantees against governmental tyranny in the states and nation. But Dr. Borgeaud's treatment of his subject is most suggestive, and will doubtless attract other students to this new field of investigation.

Macmillan & Co. reprint in convenient form *The Making of England*, by Allen B. Hinds, Scholar of Christ Church, Oxford. This was the Stanhope Prize Essay of 1892. It is a study of the origin of the spirit of political unrest and religious dissent which appeared in England at the beginning of Elizabeth's reign. The writer shows how the Spanish marriage and the Marian persecution contributed to this end. He also calls attention to the increasing activity of Parliament during Mary's reign. But the most valuable part of the book is its chapters on the Marian exiles in France, at Frankfort, Geneva and Zurich. From original sources and somewhat at length the author gives the history of the conflicts between the men of Puritan and those of Anglican tendencies — the followers of John Knox and of Richard Cox — among the exiles. In these conflicts the author finds the origin of the schism which culminated under the second Stuart.

From the little collection of *Essays by Joseph Mazzini*, translated by Thomas Okey and edited by Bolton King (Macmillan), may be

derived a good idea of the great revolutionist's political philosophy. To the modern reader the proportion of perfervid declamation to reasoned argument in his writing seems excessive; but this very fact is of the greatest significance to the student of European history in the time of Mazzini's greatest activity and influence. The selection of essays for the present volume seems to have been very judicious. Mr. King's "Introduction" is sympathetic but just.

The work of Dr. Hans Blum, *Das Deutsche Reich zur Zeit Bismarcks* (Leipzig und Wien, Bibliographisches Institut, 1893) must hold a high place in the category of writings through which the preliminary processes take place in the transformation of politics into history. This volume deals with the period from 1871 to 1890. The author is frankly partisan and Bismarckian: his standpoint as announced by himself is that of "*des warmherzigen Patrioten*," which proves to mean a National-Liberal in German politics. The material for his work is chiefly official, so far as that has become accessible, and the use he has made of it renders his book almost indispensable to a student of the times. Italicized importance is attributed in the preface to the author's personal conversations with Bismarck on events and relations treated, but any specific collaboration by the prince is formally repudiated.

The utility of ancient Irish law in the study of jurisprudence and sociology was not entirely exhausted by the work of Sir Henry Maine. Indeed he only suggested, rather than revealed, the value of the subject. Much has been done in the field since he wrote; but the ground is very difficult, and its scientific exploration is greatly impeded by the persistence of ethnic antagonisms. A very valuable aid to one wishing to become acquainted with the subject is Laurence Ginnell's *The Brehon Laws* (London, Unwin, 1894; New York, imported by Scribners). This is a mere sketch of the subject; but it is systematic, intelligent, intelligible and fair. The author avows himself a Gael, and he writes from the Gaelic standpoint. But this means only that he displays a sympathy with the ancient Irish that is much more conducive to scientific accuracy than is the antipathy so common in English commentators. It is no doubt true that Englishmen generally distort Brehon institutions, in an unconscious tendency to apologize for the manner of their final extinction. Mr. Ginnell righteously protests against such distortion, especially as illustrated in the editing of the Brehon law books that are now in process of publication.

A Summary of the Vital Statistics of the New England States, for the year 1892, is an unofficial document due to the praiseworthy zeal of the secretaries of the state boards of health. The publication of the first registration report for the state of Maine makes this summary possible for the first time. The arrangement of the data is on the lines laid down by Farr and followed in the reports of the registrar-general of England. The incompleteness of some of the returns, e.g. births in Maine and New Hampshire, is frankly acknowledged; and corresponding facts for European countries are introduced for comparison. Some of the facts still seem extraordinary. The marriage-rate (18.5 married persons per 1000 of the population) is higher than that of any European country except Hungary; the birth-rate (24.9) was less than any country except France and Ireland; the death-rate (19.9) was less than those of Italy, Hungary, Austria, Germany, France, Holland and Belgium and greater than those of the British Islands, Denmark, Norway, Sweden, and Switzerland. These figures need careful analysis in connection with the age-distribution of the population before they can be entirely accepted. The summary contains many other statistics, such as divorces, sex, births, deaths and marriages by seasons, still-born, illegitimate births and causes of deaths. Altogether it is the first attempt in the United States to treat our vital statistics in a way at all commensurate with their importance.

The *Statistisches Jahrbuch für das Deutsche Reich, Sechszehnter Jahrgang* (1895) contains the usual very complete data and several new features. Births, deaths and marriages for the present territory of the German Empire are given as far back as the period 1841-45, together with the corresponding rates. The population is distributed according to birth-rate in particular German states, thus showing the internal migration. The tables showing the *per capita* consumption of the chief commodities are continued, and constitute a valuable basis for estimating the social and economic condition of the people. Special attention is devoted to the foreign commerce of Germany, and four cartograms illustrate the character, quality and destination or source of the exports and imports. The fifth cartogram illustrates the criminal statistics for the period 1882-91, which are of unusual interest because it is the first decade completed since the imperial criminal code went into operation. The director of the imperial statistics shows great skill in combining in this annual publication the fundamental statistical tables which need to be repeated every year with new and fresh material, so that gradually all the important

results of the census and the administrative departments are brought to the attention of the public.

The *Movement of Prices, 1840-1894*, published by the Bureau of Statistics, Treasury Department, Washington, contains the tables of Sauerbeck, of the London *Economist*, and those printed by the United States Senate committee. It is accompanied by a diagram showing the fluctuations in prices and in the price of silver during these fifty years. It makes accessible material which is of the greatest utility in the discussion of the money question.

Of all the valuable publications resulting from the census activity of the years 1890-91, the one containing the most interesting material in small space, is Volume IV of the *Census of England and Wales*. It constitutes the "General Report," with summary tables and appendices. In less than 150 pages and for the trifling price of 1s. 3d. we have the chief results of the census, together with many figures for Scotland, Ireland and the United Kingdom. The report itself is a scientific and impartial discussion of the data, pointing out the difficulties and imperfections of the enumeration, the probable meaning of the data, and the changes since 1881, with their probable cause.

In contrast with the above the *Compendium of the Eleventh Census*, Part II (Washington, 1894), is a heavy folio of 1065 pages. It contains vital and social statistics; educational and church statistics; statistics of wealth, debt and taxation; of mineral industries; of insurance; of foreign-born population; and of manufactures. It is a hodge-podge of subjects and of material. The tables are far too detailed and the volume too bulky for a compendium, while (as we understand it) these tables are not the final and complete ones of the census on any of these subjects. The slight expository and explanatory sections are buried in different parts of the volume, and can only be found by diligent search. How the details of the local industries of McKeesport, Pennsylvania, or the number of colored female children enrolled in the public schools of Butte City, Montana, belong in a "compendium," is probably comprehended only by the scientific head that planned this census. It is true that the present superintendent in charge of the census has supplemented this voluminous compendium by a summary of the chief data, published in a separate volume, yet while valuable in itself we miss in that the exposition which makes statistical work intelligible and interesting.

Statisticians are accustomed to look for the decennial supplements to the reports of the registrar-generals of England, Scotland and

Ireland, as valuable contributions to the literature of vital statistics. *The Supplement to the Twenty-seventh Report of the Registrar-General of Ireland* (Dublin, 1894) contains the statistics for the decade 1880-90. The average marriage-rate was 8.62, against 9.46 in 1871-80; the birth-rate 23.3 against 26.5; the death-rate 17.9 against 18.3 during the previous decade. All show a decrease. The emigration shows an increase, 15.6 per 1000 against 11.8 in 1871-80. Valuable discussions follow, especially in respect to the mortality from different diseases.

Vital Statistics of New York City and Brooklyn, by John S. Billings, M.D. (Washington, 1894), is a special report of the Eleventh Census of the United States. It discusses particularly the death-rates in these two cities in relation to sex, age, race, nationality, parent nativity and different diseases. Each sanitary district in the two cities is carefully described, its area, population, density of population, character of land, kind of buildings and the nationality of the prominent elements of population. The death-rates according to nationality and from each principal disease in each district, are then compared with those of the whole city. Numerous colored cartograms make this the most elaborate attempt that we have yet had to study vital statistics in American cities. The only doubt is whether the material is perfect enough to bear this elaborate treatment. The attempt is certainly praiseworthy, considering the obstacles in the way.

Almost or quite the last literary work by the late President Julius H. Seelye of Amherst College, was a primer on *Citizenship* (Ginn & Co., 1894), designed as a text-book for classes in government and law. It sets forth in very simple terms the familiar Seelye-Hickockian philosophy of ethics and politics. The topics are arranged in the following order: First, International Law (*a*) in time of peace, (*b*) in time of war. Second, National law: (*a*) Public law, including constitutional law, conceived as the sum of the rights of government, and administrative law, conceived as the sum of the duties of government; (*b*) Private law, including political law, which is divided into the rights of the governed and the duties of the governed, and civil law.

Having successfully enlarged his *Encyclopedia Britannica* articles on the History of Political Economy and on Socialism into acceptable books, Dr. John Kells Ingram has now pursued a similar course with his article on Slavery. The result, *A History of Slavery and Serfdom* (London, Adam and Charles Black), is a volume of 285

small pages, which may serve as a convenient introduction to more detailed studies of the great institutions named or as a measurably complete sketch for the purposes of the general reader. The last 47 pages are devoted to Russian serfdom and to the still existing slavery of the Mohammedan East.

The Christian State: A Political Vision of Christ (New York, T. Y. Crowell & Co., 1895), is the title of the latest work in which the Rev. George D. Herron sets forth that very peculiar compound of theology, socialism and pseudo-economics which has secured for him a considerable notoriety. The book is an elaboration of Mr. Herron's much discussed and severely criticised commencement oration at the University of Nebraska in 1894. Mr. Herron seems to be a thoroughly well-meaning man, and much that he says in this little book is true and worth heeding, but he has never acquired the scientific habit of mind and his knowledge is of the most superficial description. He thinks that "the political appearing of Christ is manifest in the increasing social functions of the state," that "there is a growing belief on the part of social reformers of all classes that a juster order of society can be procured only through the state as the social organ," and that "with this turning to the state as the social organ has risen an increasing faith in Christ as the social law-giver." He says that he regards Prof. John R. Commons of Indiana University "as our most promising and divinely opportune political economist."

The existing interest in every phase of the "woman question" justifies brief notice of three reprints. In 1893 M. Louis Bridel, professor in the Geneva law faculty, submitted to the cantonal council of state a plea for bettering the legal position of married women. This he publishes, together with a review article on the same subject, under the title : *Le Droit de la Femme Mariée sur le Produit de son Travail* (Geneva, Stapelmohr, 1893). The reforms which he recommends — complete control by the wife of her personal earnings, and effective provision for her support by her husband — have already been instituted, as he shows, in the great majority of European and American states ; but in Geneva and some other Swiss cantons the law of matrimonial property relations seems to be as archaic as that of our own District of Columbia. The pamphlet gives a useful collection of recent laws. In *Le Mouvement Féministe et le Droit des Femmes* (Geneva, Eggiman et C^{ie}, 1893), the same author presents his views on every phase of the woman question. While he demands in general that women be placed upon

the same legal and economic footing as men, he nevertheless approves the special restrictions imposed upon female laborers by recent factory laws, and advocates the extension of similar protection to shop-girls and housemaids. He also demands that women be indemnified by the state for the loss of wages which such restrictive legislation entails! He believes that women should ultimately receive the suffrage and be made eligible to public office, but thinks that this step should not be taken until they have had longer experience of civil equality. On this latter question—woman suffrage—the Bishop of Albany (N. Y.) has already expressed his opinion; and those who imagine that they have become acquainted with his utterances through newspaper reports and denunciatory “letters to the editor” will find it worth while to obtain from the Albany Anti-Suffrage Association their brief *Extracts from the Addresses of the Rt. Rev. Wm. Croswell Doane* (1895).

In 1892 M. Jules Nicole, professor in the Geneva faculty of letters, found in the Geneva city library the Greek text of an important edict of Leo the Philosopher (A.D. 886–911) concerning the corporations of Constantinople—an edict previously known to us only by a dozen paragraphs cited by the Byzantine jurists. The text discovered by M. Nicole, and published by him in 1893 with critical notes and a Latin translation, although probably incomplete, contains 174 paragraphs and lays down minute regulations for twenty-two guilds of tradesmen and artisans. Under the title *Le Livre du Préfet* (Geneva, Georg et C^{ie}, 1894) M. Nicole now gives a French translation with an admirable introduction and valuable explanatory notes. As he himself points out, the value of the edict lies not merely in the more exact knowledge it gives us of Byzantine commercial and criminal law and the light it throws upon mediaeval civilization, but also and especially in the internal evidence it affords of the absurdity and futility of governmental paternalism. The subsequent history of the Eastern Empire gives point to the moral. If, as the editor observes, Constantinople, in spite of its exceptionally favorable economic position and its monarchic government, steadily declined in wealth and power under this system, what are the chances that any similar system would prove successful in the keen international competition and embittered partisan conflicts of the present day?

POLITICAL SCIENCE QUARTERLY.

A RETROSPECT.

WITH the present number the **POLITICAL SCIENCE QUARTERLY** completes the tenth year of its existence. In science a decade is not a great period; in the life of a periodical devoted to science, it is of considerable significance. The first decennial period, in particular, gives an answer to some important questions. At its successful conclusion the publication may be presumed to have vindicated its right to existence. Its growing pains are matters of the past, and an untroubled career of mature usefulness may be confidently anticipated. In congratulating themselves upon the attainment of this desirable situation, the editors deem it interesting and possibly instructive to glance backward over the work of the decade and note some of its salient features.

The field which the **QUARTERLY** undertook to cover was a wide one, as was fully realized at the inception of the enterprise. The work to be done, moreover, was, from the point of view of periodical literature, that of the pioneer, at least in the English language. It was a most convincing evidence of sound judgment in thus entering the field that our example was quickly followed by others. The end of the decade shows a considerable number of periodicals under university auspices, exploiting the scientific ground where at the beginning the **POLITICAL SCIENCE QUARTERLY** worked alone. These later ventures have been devoted, however, less to political science in general than to various special branches which are grouped under this term. The resulting development of the subject

has naturally increased the task of the periodical which seeks to do justice to all phases of it. Hence, wide as was the QUARTERLY's field at the outset, it is wider still to-day. For example, from that once tolerably well-defined corner of the field designated as political economy, we now have radiating off areas of vast and indefinite dimensions under the names of finance, statistics and sociology. Public law, having differentiated into international, constitutional and administrative, now calls for special treatment of the problems of municipal government. Politics, holding its own in the thought of the time on the side of the general theory of the state (*Allgemeine Staatslehre*), is manifesting especial activity, due to the great development of political consciousness among the peoples, on the side of practical policy (*Politik*).

In this great and growing field of political science—or of the political sciences, if the plural be preferred—it is interesting to see, from a review of the subjects treated, what the QUARTERLY has done. It has been our avowed aim to treat from a scientific standpoint the questions of chief contemporary interest. A review of the subjects dealt with in our leading articles should, therefore, serve in some sort as an indication of the course of political and social history for the decade. The total number of leading articles in the ten volumes, exclusive of the Record of Political Events, is something less than two hundred and fifty. No classification of these could be more than rough and general; since few of the subjects lie exclusively in a single field. For the present purpose it is sufficient to group them under the three categories of politics, economics and law: including under politics both political theory and that residuum of practical questions which is not easily assignable to either economics or law; including under economics, topics of public and private finance, statistics and sociology; and coupling with public law discussions of jurisprudence and of general legal philosophy. On this basis it appears that rather more than one hundred of the leading articles have treated of economics, about eighty of law, and about sixty of politics. The relation of these numbers corresponds to the common observation that

in the range of political science topics of economic and social import at present hold by far the leading place in both popular and scientific interest. This is true of both America and Europe. The secondary position of legal subjects points to a condition that is especially characteristic of America, namely, the waning importance of constitutional questions. That the legal category holds the second rather than the third place in our list is probably due to the development of administrative law — a science within whose range fall many of the most vital problems of the day in the United States, particularly those of municipal government. As to the third category, the first of the elements of which it is made up, pure political theory, is quite alien to the American genius, which tends to scorn ultimate philosophy; while the second and residual element has been minimized by the policy of the *QUARTERLY*. Under this last head falls the work of the periodical in the field of history. Without pretending to take sides in the perennial debate as to whether history is or is not a science, we have practically limited our pages to such historical contributions as have had for their end rather the illustration of some phase in the development of institutions than the mere presentation of the truth about past events.

The contents of the first volume of the *QUARTERLY* very naturally indicate a process of orientation. Especially on the side of public law and politics, topics of recent or contemporary interest exhibit in their discussion the policy that is to be pursued and at the same time put the periodical abreast of events. Thus for our own land we find a general view of the constitutional position of our states in reference to the nation; an account of the constitutional questions during the Civil War; an examination of the legal questions connected with legislative investigating committees, suggested by recent proceedings of the New York legislature; and a defense of the supreme court's late decision on the legal-tender question in *Juilliard vs. Greenman*. For foreign nations, the recent Conference of Berlin on the Congo question is discussed, the then lately settled constitutional struggle in Norway is described,

and an elaborate account is given of the course of events which had only a short time before drawn world-wide attention to Egyptian affairs. The justification for this selection of topics is gratifyingly strong when we reflect that both the African and the Norwegian articles are almost indispensable to an intelligent grasp of questions that are prominently before the public yet to-day. On the economic side, also, the list of topics treated testifies to the persistency of issues through the decade. The labor question, socialism, bimetallism and the future of our banking system are as conspicuous now as they were when the *QUARTERLY* put forth its first number.

In the second volume we find the practical questions of the time reflected in studies of the Interstate Commerce Law and of that test of strict constructionist consistency — the Oleomargarine Law. With the third volume (1888) President Cleveland's famous new departure on the tariff question finds an echo in articles on the tariff of 1828 and on surplus revenue, and the immigration evil receives elaborate treatment. The beginnings of the movement which has revolutionized our method of balloting are indicated by a study of the ballot in England. Most striking of all, however, is the fact that three of the four numbers in this volume contain articles on trusts. It is clear without consultation of official records, that this is the year which marks the full development of the great controversy over this novel method of industrial combination. In the field of foreign affairs, this volume recalls the tragic incident of Frederick III's brief reign by a study of the powers of the German Emperor, and the profound modification of English local government by an account of the bill for the establishment of county councils.

The most conspicuous group of subjects in the fourth, fifth and sixth volumes is that touching matters of particular concern to the great agricultural region of our country. Farm mortgages, railroad land-grants, the general relations of railways to the farmers — all receive attention, and in 1891 an elaborate account of the Farmers' Alliance indicates the general interest in that great ebullition, of which the sole reminder

to-day is the dying simmer of "populism." Questions of taxation are also prominent in these volumes, especially the taxation of corporations. Other studies of corporations in various aspects reflect the sentiment which the socialistic element in the farmers' movement has awakened. An important phase of the immigration question is suggested by an analysis of the element contributed by Italy, as well as by an examination of the national government's responsibility in cases like the lynching of Italians in New Orleans in 1891. Other articles bring to mind the final attainment of international copyright, and the controversy, then raging but now happily ended, in reference to New York's constitutional convention. The character and defects of the national accounting system were considered by different writers in 1891 and 1892, and reforms were suggested which have been actually effected through the recent work of the Dockery Commission.

The events suggested by a glance over the contents of the last four volumes are to a great extent still fresh in the memory. This is certainly true of the anti-option discussion — which was treated by the *QUARTERLY* first in 1892, of the panic of 1893, of the latest tariff and of the income tax. On the other hand, our relations with the South American republics, especially the controversy with Chili, have faded further into the background, whither the still undissolved monetary conference seems to be rapidly following them. A topic which is apparently destined to grow rather than wane in importance is that of municipal home rule, especially as involved in the relations of New York city to the state ; and this topic has found a conspicuous place in our last two volumes. As to the foreign world we have been able to publish systematic studies of Irish land legislation, culminating with Mr. Balfour's great act of 1891 ; of the general transformation of commercial relations among the powers, stimulated by the "new course" adopted in Germany after Bismarck's fall ; of the workings of parliamentary government in Italy ; and of the recent remodeling of the Belgian constitution.

The foregoing review seems to indicate that the *QUARTERLY* has fairly fulfilled its purpose to treat events of current interest. That its general attitude toward history has not altogether precluded attention to the great events of the past, is also readily demonstrable. Our own political and constitutional history, in particular, has received noteworthy treatment. Besides a number of important studies of colonial and revolutionary ideas and events, and estimates of our early statesmen, there have appeared no less than twelve articles on various phases of the issues involved in the Civil War.

But the scientific consideration of topics of current interest is but one side of the *QUARTERLY*'s activity. The development of science in the more abstract forms has also been always within its scope. At least one-sixth of all the articles published during the decade have fallen clearly in the category of political, economic or legal theory ; and this number is exclusive of the book reviews, in which, through analysis and criticism, by far the larger contributions to theory have been made. In leading articles have been discussed such subjects as the limits and persistence of competition ; the modern theory of profits and wages ; the basis and general theory of taxation ; the relations of statute and common law ; the theory of sovereignty and its special application to the United States ; the theory and methods of statistics ; the scientific character and divisions of sociology ; the social-contract theory of the state ; and the relation of the executive and the judicial departments of government. A partial list of the works that have been deemed worthy of review in leading articles will illustrate not only the degree of the *QUARTERLY*'s activity, but also the trend of scientific literature during the decade :

Von Holst's Public Law of the United States.

Laband's German Public Law.

Bryce's American Commonwealth.

Wells's Recent Economic Changes.

Booth's East London.

Marshall's Principles of Economics.

Cunningham's Growth of English Industry.

Booth's In Darkest England.

Boehm-Bawerk's Capital.

Bastable's Public Finance.

Levasseur's La Population Française.

Campbell's Puritan in Holland, England and America.

Ashley's English Economic History.

Argyll's Unseen Foundations of Society.

In the special department of Reviews and Book Notes the QUARTERLY has noticed during the decade something over a thousand publications. The literary activity of recent years in the social and political field has been a matter of common remark ; but despite this great activity it seems *a priori* probable that with its average of a hundred works reviewed annually, the QUARTERLY has brought to the attention of its readers practically everything of scientific value in the output of the decade. Rather more than one-third of the volumes noticed were in languages other than English. Among the non-English works the German were most numerous, with the French in the second and the Italian in the third place. The Dutch, the Spanish and the Portuguese literatures have also been represented. As to subject-matter the books reviewed manifest the same predominance of social and economic topics that has been noted as characterizing the leading articles.

In respect to the *personnel* of the body of contributors, the scientific scope and purpose of the QUARTERLY would justify a presumption that a great majority of those who have written for it would be found in the ranks of college and university instructors. Especially probable would this seem in view of the notable development of the university spirit of research in America during recent years. In the department of Reviews the presumption proves well founded. Here a very considerable majority of our contributors have been connected with institutions of higher education. The development of theory, which has been referred to as a particular function of the reviews, has been thus, very properly, for the most part in the hands of the scientists pure and simple. But of our leading articles fully one-half have been contributed by writers outside

the ranks of educators. The pulpit, the bar and the daily and weekly press have been represented, with especially happy results in throwing light on topics of current interest ; while from the departments of our national administration at Washington have come valuable studies of governmental practice. Some fifteen per cent of the leading articles have been contributed by foreigners — the British element being most conspicuous, with France, Germany, Italy, Belgium and Switzerland represented. In the matter of contributors the editors have striven to avoid falling into a narrow rut. They have felt it to be for the advantage of their periodical, as well as of political science, to welcome useful matter from the widest possible range of sources ; and it is with some gratification that they are able to point out that thus far no number of the *QUARTERLY* has failed to present at least one leading article by a writer new to its pages.

In conclusion, it would be not only ungracious, but unjust, in a review of the factors that have made the *QUARTERLY* what it is, to omit reference to the publishers. The evidences of their cordial coöperation lie on the surface. And were this the appropriate occasion, their part in the career of the publication might afford a striking lesson as to the power that can arise from a proper combination of pure science, mechanical art and mercantile enterprise.

THE TREASURY RESERVE AND THE BOND SYNDICATE.

THE undertaking known as the "bond-syndicate contract" with the United States government was the most interesting financial episode of 1895. Politically and commercially, its results were and still are far-reaching. Economically, it was so remarkable an experiment, so absolute a departure from the beaten track of precedent, that it merits particularly thorough examination. To such examination it is my purpose to subject the episode. I shall take nothing for granted, shall admit no statement of fact unless from the first authority, and shall use no logic which prejudice, economic or political, can reject.

The experiment of 1895, however, can neither be understood nor properly criticised until the situation which made it possible has been investigated. This is no slight pre-requisite; for it involves the financial history of our government since resumption, and that history has not yet been written.¹ The facts must be gathered from the trade reports, the market quotations, the executive documents and the Congressional proceedings of the last seventeen years. I shall undertake, however, to sketch concisely the essential incidents of this very interesting period, and to discuss in detail several episodes which bear directly on our subject.

I.

The first questions to answer are: How comes our government to be issuing bonds in time of peace? And by what authority is such issue left to executive discretion?

On the 14th of July, 1870, was approved a law for the refunding of the national debt. It authorized, purely for retirement of older high-rate bonds, new bond issues of various

¹ The last volume of Mr. Bolles's excellent work carries the history only to 1879.

classes, not in the aggregate to exceed \$1,500,000,000.¹ Five years later, in January, 1875, a further statute was enacted providing for redemption of government notes in coin on and after January 1, 1879. The concluding paragraph of this statute may profitably be cited here in full:

And to enable the Secretary of the Treasury to prepare and provide for the redemption in this act authorized or required, he is authorized to use any surplus revenues, from time to time, in the Treasury not otherwise appropriated, and to issue, sell, and dispose of, at not less than par in coin, either of the descriptions of bonds of the United States described in the Act of Congress approved July 14, 1870.²

This paragraph is clear in terms, and it was clearly discussed and understood before adoption. Additional bond sales, it will be observed, are authorized to enable the secretary "to prepare and provide," not alone for resumption at a stated date, but for redemption "from time to time" of all outstanding notes tendered for coin. The distinction is important, chiefly because of a notion prevalent in some minds that the "bond clause" of the statute was not designed to operate after January 1, 1879. Such an idea has as little basis in the language of the act as it has in common sense. So long as redemption of outstanding notes should continue to be a statutory requirement, and any notes remained outstanding, the framers of the law were perfectly well aware that provision for such redemption, with everything therein legally involved, must continue to be the secretary's duty. And that there might be no misunderstanding as to the condition, Congress in 1878 voted that all notes then outstanding should, when redeemed, be continuously reissued by the Treasury. When reissued, they necessarily became again redeemable under the Act of 1875.³

¹ Laws of the United States, 41st Congress, second session, chap. cclvi. By a later amendment the authorized issue was raised to \$2,000,000,000.

² Laws of the United States, 43d Congress, second session, chap. xv, January 14, 1875.

³ The power to sell bonds for redemption purposes on future occasions of necessity was publicly asserted by the administration in 1879 and 1880, and was never

Nothing as yet is said in any of these statutes regarding the amount or character of the redemption fund. In recent years the "hundred-million gold reserve" has become the most familiar term in American finance. So long as the Treasury's surplus gold fund has held above \$100,000,000, the public mind has been generally easy; when the gold has fallen below that level, misgivings and market disturbances have at once begun. Every recent bond issue, moreover, has been plainly so contrived as to restore an impaired reserve to the neighborhood of this arbitrary sum. One hundred million dollars gold, then, has not only been what Bagehot aptly called the "apprehension minimum," but it has plainly been accepted for a legal minimum as well. Let us see how this limit was determined.

In 1882 the gold reserve for the first time appeared by name in a statute of the government.¹ By its title a national-

disputed. Secretary Sherman wrote officially: "It would be only in an emergency not easy to foresee, and not likely to arise, that the power to sell bonds for redemption purposes would be exercised, but it should be preserved." Annual Treasury Report, 1879. And again, a year later: "In a supreme emergency, the power granted to sell bonds will supply any possible deficiency." Annual Treasury Report, 1880. In 1892 the question was expressly referred by the House of Representatives to its judiciary committee. The majority and minority of this committee differed in their reports on the question of a gold reserve. But the majority report says of bond sales: "There is no limitation upon the authority of the Secretary of the Treasury to sell bonds for the purposes of redemption under this act"; and the minority report: "This act contemplated a sale of bonds from time to time in excess of immediate need for redemption purposes, so that an available or reserve fund should be constantly on hand." *Cong. Record*, July 6, 1892.

¹ Secretary Sherman's earnest appeal to Congress, "that by law the resumption fund be specifically defined and set apart," Annual Treasury Report, 1879, received no attention whatever. Four months after resumption, in answer to a resolution of inquiry from the Senate, Mr. Sherman stated that he was carrying in the Treasury \$138,000,000 coin, or forty per cent of liabilities — "believed to be the smallest reserve upon which resumption could be prudently commenced and successfully maintained." Of this amount \$95,500,000 was gold provided from resumption sale of bonds, "which must, under existing law, be maintained unimpaired for the purpose for which it was created." Letter to the president of the Senate, May 16, 1879. Both these opinions were officially concurred in by Secretary Folger (Annual Treasury Report, 1881) and by Secretary McCulloch (Annual Treasury Report, 1884). It is worth noticing that forty per cent of outstanding United States notes, which in 1879 was \$138,000,000, would to-day be \$199,000,000. Secretary Foster raised this point three years ago, arguing for an increase in the gold reserve's legal minimum to \$125,000,000 (Annual Treasury Report, 1892).

bank charter act, this law in its final paragraph provides for the deposit of gold and silver with the government in exchange for Treasury certificates. This was indeed the act embodying the famous Congressional retort to the efforts of New York City banks to exclude silver certificates from their reserves.¹ But by the irony of fate, often involved in legislative compromise, the very next clause established the "hundred-million gold reserve." "Provided," the act concludes,

that the Secretary of the Treasury shall suspend the issue of such gold certificates whenever the amount of gold coin and gold bullion in the Treasury reserved for the redemption of United States notes falls below \$100,000,000.²

In the Congressional debate, the purport of this paragraph was clearly recognized.³ Under its terms, with the gold reserve intact, the certificates, "when received" in payment of public dues, "shall be reissued." The only possible object of a suspension of their issue when the reserve passed below \$100,000,000, was to restore that arbitrary sum. It was apparently presumed that if the reserve fund were to sink below \$100,000,000, the gold certificates would continue to be received in revenue, and not being reissued, would release a corresponding amount of gold coin pledged against them. When the reserve, eleven years later, actually passed the arbitrary line, a very different state of things ensued. But none the less, the law defined the gold fund's minimum. It was formally so construed in the treasurer's report of 1884, and the rule has been accepted by all subsequent administrations.⁴

¹ This clause reads: "No national bank shall be a member of any clearing-house in which such [silver] certificates shall not be receivable in settlement of clearing-house balances."

² Laws of the United States, 47th Congress, first session, chap. ccxc, July 12, 1882.

³ Discussion of the proper legal minimum for the gold reserve occupied much of the Senate's time. One point raised by the free-silver coinage advocates was that a "mixed reserve" of gold and silver ought to be maintained. A proviso to this effect they failed to introduce.

⁴ A thorough and authoritative review of this question was made by the judiciary committee of the House of Representatives, in the report already referred to,

So much for the origin and authority of the "hundred-million gold reserve." It remains, before examining the Treasury operations of 1895, to glance at the intervening period.

II.

The financial history of the United States government since resumption embraces four distinct and separate periods. The first, extending from 1879 to 1883, was marked by swift enhancement of credit and prosperity. During nearly all of these four years there was a continuous increase in government revenue, so much more rapid than increase in expenditure that the Treasury's general surplus greatly expanded.¹ Meantime, so large an inflow of foreign gold followed resumption, and so great was public confidence in the Treasury, that payments of public dues were freely made in the yellow metal.² As early as September, 1879, on the ground that gold coin "beyond the needs of the government" had accumulated in the Treasury, Secretary Sherman formally authorized the use of gold in

submitted July 6, 1892. The committee's majority report concludes as follows: "The legal effect of this proviso [in the act of 1882] was, first, to prevent the exchange of legal tenders for gold for the purpose of obtaining gold certificates, and, second, to fix the amount of the redemption fund or reserve fund at not less than \$100,000,000 gold coin and gold bullion. . . . That it was the intention of Congress to fix the minimum amount of this reserve fund at \$100,000,000 gold and gold bullion, and that it should be maintained at that sum, seems clear from the language of the act." It is worth recalling that this majority report was presented by ex-Judge Culberson of Texas, who was a free-coinage advocate, but a sound jurist, and whose conclusion, therefore, was clearly unbiased. The minority report is a curious rambling document, whose character may be judged from the following legal argument: "It seems to be conceded that no Secretary of the Treasury has kept the proceeds of bonds sold for redemption purposes in any separate box, vault or receptacle."

¹ The government's ordinary revenue and expenditure (excluding receipts from loans and disbursements on the public debt) compare as follows:

<i>Fiscal Year.</i>	<i>Revenue.</i>	<i>Expenditure.</i>
1879	\$272,322,136	\$161,619,934
1880	333,526,500	169,090,062
1881	360,782,292	177,142,897
1882	403,525,250	186,904,232

² In the twelve months ending November 1, 1880, fifty-seven per cent of customs dues at New York was paid in gold coin (Annual Treasury Report, 1880).

regular disbursements.¹ As late as the close of 1883, the gold surplus in excess of certificates outstanding stood at \$155,429,000.

The characteristics of the second period, extending from the beginning of 1883 into 1886, were the heavy cutting down of revenue without reducing expenditure, the occurrence one year of a revenue deficit,² and the Treasury's struggle to save itself from being utterly swamped with silver currency. The outside trade revival reached and passed its high level in 1881, the twenty to thirty millions compulsory annual silver coinage continued, and within two years the Treasury had begun to feel discrimination in the currency. In almost all true economic aspects, and in many particular incidents, this period anticipated with remarkable accuracy the symptoms of 1892. Foreign exchange went heavily against us; the net import of gold was changed to export. Gold payments to the Treasury were replaced by silver payments,³ and the silver came in faster than it could safely be disbursed. The mere hint by Assistant-Treasurer Acton, that he might resort to the settlement of all his New York balances in silver, sent gold to a speculative premium.⁴ Gold was withdrawn from the Treasury reserve in February, 1884, apparently for hoarding.⁵ In the first eight months of 1884, the government's surplus gold holdings decreased \$39,000,000, while its surplus silver simultaneously increased \$21,300,000. The Treasury report that year frankly discussed the possibility of a forced suspension of gold payments.⁶ As late as July, 1885, with the gold

¹ Circular to disbursing agents, September 19, 1879.

² Fiscal year 1883, when the deficit, after required sinking-fund payment, was \$1,299,312.

³ The following table shows the percentage of customs dues at New York paid in gold and in silver during the last six months of 1883 and 1884 respectively :

	1883.	1884.
Gold certificates,	74.1	30.8
Silver certificates,	17.2	35.7

We shall discover this mechanical law again in operation under the treasury-note issues during and after 1890.

⁴ *Financial Chronicle*, March 1, 1884.

⁵ *Ibid.*

⁶ Secretary McCulloch wrote: "A panic or an adverse current of exchange might compel the use in ordinary payments by the Treasury of the gold held for

reserve down to \$115,000,000, the New York clearing-house banks, as a measure of emergency, offered the Treasury, from their own reserves, \$10,000,000 gold in exchange for fractional silver coin.¹

The third period of our post-resumption history, running from 1886 into 1891, comprised a series of episodes utterly unintelligible to those who do not hold the clue to American government finance. It was introduced by the extremely able financiering which kept the silver out of the Treasury and in permanent circulation.² Next followed a heavy surplus revenue,³ a revival of confidence in the currency, and an enormous increase in the gold reserve. In March, 1888, the Treasury's gold surplus touched \$218,818,000 ; in August its total money holdings reached the sum of \$330,763,985 — actually one-fourth as much as the total money supply in outside circulation. This was currency contraction by most extraordinary methods. It served, nevertheless, fully and fairly to counteract the influ-

the redemption of the United States notes, or the use of silver and silver certificates in the payment of its gold obligations." Annual Treasury Report, 1884.

¹ This was to be paid *pro rata* by the banks. The actual transfer of gold was about \$6,000,000.

² Secretary Manning's achievement consisted in cutting down the supply of United States notes of small denominations, and replacing them chiefly by notes for \$1000 each. In the two years ending June 30, 1886, \$21,620,000 notes for one, two and twenty dollars were thus extinguished, while the supply of \$1000 notes increased \$18,327,000. This measure at once created a general demand for the smaller silver certificates and for silver dollars. No silver certificates smaller than ten dollars were then authorized, but in its appropriation bill of August 4, 1886, the 49th Congress was induced to authorize the issue of one, two and five-dollar certificates, or the exchange of large certificates for an equal amount in small denominations. These latter are apt to stay in circulation. As a result, silver certificates in the people's hands rose from \$88,116,000 in June, 1886, to \$142,000,000 in June, 1887, and to \$257,102,000 by the middle of 1889. In the same period the Treasury's surplus silver holdings decreased \$80,000,000.

³ The ordinary revenue, expenditure and gold holdings in excess of outstanding certificates, at the end of the fiscal years, was as follows :

	<i>Revenue.</i>	<i>Expenditure.</i>	<i>Gold Reserve.</i>
1885	\$323,690,706	\$208,840,678	\$120,298,895
1886	336,439,727	191,902,992	156,793,749
1887	371,403,277	220,190,602	186,875,669
1888	379,266,074	214,938,951	193,866,247
1889	387,050,058	240,995,131	186,711,560
1890	403,080,982	261,637,202	190,232,405

ence of continuous expansion. Meantime, however, the cry arose from every money market to "reduce the surplus," presently followed by the Treasury's enormous purchases, at from five to twenty-seven per cent premium, of the government's own unmatured obligations.¹ This brief career of seemingly boundless wealth, swiftly followed by almost complete collapse of Treasury resources, has but one precedent in history, and the precedent is our own, namely, the vote of Congress, in 1836, to dissipate the surplus by "deposit" of \$37,000,000 with the states, the Treasury's payment, prior to April, 1837, of \$28,101,644, and its issue of \$10,000,000 bonds, exactly five months later, to avert government bankruptcy.

III.

The fourth period of the history we are following began in 1890, and brings us down to the present time. Its characteristics have been violent reduction in revenue, enormous increase in government expenditure, a Treasury saved from actual bankruptcy only through the loan market,² but foremost of all, the shifting upon the Treasury of the entire burden of supplying the large gold export drain, and the consequent break-down of the gold reserve. These extraordinary results were closely connected with three acts of legislation by the 51st Congress. In July, 1890, was passed a revenue-reducing statute, unparalleled in history for wholesale violence. It was accom-

¹ Bond purchases began April 17, 1888, and ceased formally in April, 1891, the expenditures in excess of regular sinking-fund appropriations being as follows:

Fiscal year 1888	. . . . .	\$31,990,326
" " 1889	. . . . .	90,456,172
" " 1890	. . . . .	76,771,898
" " 1891	. . . . .	63,334,534
Total bond purchases		\$262,552,930

² The three bond sales of February, 1894, November, 1894, and February, 1895, though primarily designed to restore the gold reserve, brought to the Treasury \$179,421,252 additional money. Yet such was the deficit in revenue that in September, 1895, after all payments had been made on the bond subscription, the Treasury's total available surplus holdings of all kinds of money were only \$181,180,094.

panied by a deliberate and equally unprecedented increase in government expenses.¹ The same month brought executive sanction to a new currency statute that was also a novelty in legislation. This so-called Silver-Purchase Law involved the addition of something like \$50,000,000 annually to the government's outstanding and redeemable notes. Such, then, was the situation of the United States at the close of 1891. The flow of currency into the government's vaults, which artificially checked the embarrassments of 1885, was totally reversed. Even the active industrial movement which absorbed the circulating currency of 1888 had ceased;² and an arbitrary annual increase of eleven per cent in circulating medium was now going on, in the face of a shrinkage of ten per cent in the commercial use of money.³

Under such circumstances it would seem, *prima facie*, that specie export to other foreign markets was the most natural result conceivable. There were, however, some facts connected with the gold export movement which still in many minds give weight to an opposite contention. In the first place, the usual minimum of exchange at which gold may be profitably shipped is \$4.89 to the pound sterling, whereas all of the gold exports in 1891 and 1892 were arranged with sterling at or below \$4.88½.⁴ In the second place, it was known that the Austrian

¹ This is the official record:

<i>Fiscal Year.</i>	<i>1890.</i>	<i>1892.</i>
Net ordinary revenue	\$403,080,982	\$354,937,784
Net ordinary expenditure	261,637,202	321,645,214

But in 1892 there was a charge to be met, in addition to the above, of \$23,378,116 for interest on the public debt; also a regular charge, under the sinking-fund law, of \$49,063,114, only three-fourths of which the secretary paid.

² The failure of Baring Brothers and the simultaneous reaction in the English and American credit movement occurred less than four months after the enactment of the Silver-Purchase Law.

³ Aggregate exchanges at all the leading clearing houses in the United States, during the first six months of 1891, were \$27,033,823,268, against \$30,151,200,432 in the same months of 1890. (*Financial Chronicle's* returns.) Such figures are, of course, the most accurate index possible to the use of money in current trade.

⁴ Official statement by director of the United States Mint, 1892; verified by market quotations of the time. Large gold shipments were made in 1891 with actual rates for demand bills at \$4.87 to \$4.87½.

government, having decided early in 1892 on resumption of specie payments, had contracted with a European banking syndicate for the necessary gold.¹ The inference has been drawn, therefore, that the gold movement from this country was forced and unnatural. Since much of our subsequent discussion hangs on the truth or falsity of this theory, I propose to investigate it.

To begin with, a substantial part of our exported gold did go to Austria.² The Vienna bankers were undoubtedly making an effort to attract the gold already moving from our ports, and it may be that at times a small commission premium was paid, directly or indirectly, sufficient to cover a slight apparent loss in the market for exchange.³ Such a premium was at least made possible through the profits of the Austrian contract. Every one knows that this was the nature of our own government's gold import in 1895; exactly the same arrangement was

¹ The original syndicate comprised the house of Rothschild, the Hungarian Credit-Anstalt, the Austrian Credit-Anstalt, the Union Bank of Vienna, the Vienna Banking Company and the Berlin Disconto-Gesellschaft. Its object was the conversion of all paper and silver loans outstanding at five and six per cent, into four per cent gold loans, and the resumption of specie payments on notes and exchequer bills to the amount of 411,994,132 florins (\$147,084,000). The act gave authority to the finance ministers of Austria and Hungary to raise new gold loans for redemption purposes of 262,000,000 florins (\$126,284,000). The bills, however, were not introduced in the Austrian Parliament until early in 1892; their reading was completed May 28, and their formal enactment took place only August 18, 1892.

² From an official Austrian report it appears that of the 100,000,000 crowns in gold (\$20,300,000) brought to Vienna against the loan of 1893, 59,000,000 crowns value was in American eagles. But American gold also went largely to Austria before 1893. During 1892 the course of New York exchange was watched with deep personal interest by Vienna bankers. News of our currency operations, and comments on the subject by our government authorities, had immediate influence on the Vienna Stock Exchange. See Vienna correspondence London *Economist*, December 13, 1892.

³ No direct premium was bid for American coin, however, either by the Austrian government or by the syndicate. This statement is emphatically made by Gustav von Mauthner, director of the Austrian Credit-Anstalt and manager of the syndicate's gold operations, in a very interesting article published in the *Neue Freie Presse* in May, 1893. Herr von Mauthner, answering the assertion that the syndicate was artificially drawing away gold from the United States, declares that the bankers purchased no gold anywhere until after January, 1893, that the only actual premium bid was made in March, and that this was for gold bars, which the United States was not exporting.

made in our preparations for the resumption of 1879.¹ But the syndicate of 1892, like those of 1878 and 1895, had to discover where the gold could be best obtained. This was a business question. A good deal of the gold was drawn directly from Paris and Berlin. A part, also, was obtained in London.² But it was the syndicate's desire to draw only such gold as was "in motion";³ that is to say, gold which was already being exported in the regular way of trade. The reason for such preference is simple. Gold moving thus is surplus money, and no money market will be disturbed by its withdrawal. Now it was perfectly evident, to foreigners at least,⁴ that gold was being expelled by the laws of trade from the United States. The outflow had begun long before Austria was in the market. The only special problem of the bankers was, how to make sure that as much of the American export as was needed should be directed to Vienna. The natural course of the movement, guided by relative demands of trade, was from the United States to France.⁵ To divert the already moving stream of specie to Vienna, was undoubtedly the purpose of the sales of exchange, by the syndicate's New York agents, at a rate slightly below the normal gold-exporting point.

But let us go one step further and study the actual mechanism of the operations. If the gold shipments were artificial, the high rates of exchange which made them possible must

¹ Upwards of a million gold, for instance, was imported during one month in the autumn of 1878, when demand sterling was between \$4.87 and \$4.88, or far above the importing point, and when there was virtually no market premium on gold. Both the Morrill and the Sherman contract paid one-half of one per cent commission on all bonds floated, besides allowing any incidental profit on an advance in price when the bankers marketed the bonds.

² One-fifth of the gold delivered under the contract of 1893 was in sovereigns, one-fifth in twenty-franc pieces, one-eighth in twenty-mark pieces.

³ Von Mauthner in *Neue Freie Presse*.

⁴ See the *Économiste Français* and London *Economist* during the period; especially the *Economist's* Vienna correspondence of August 8, August 15 and October 7, 1893.

⁵ More of our coin actually did go to Paris, and stay there, than went to Vienna. Our imports of United States coin during the panic of 1893, and probably the greater part of the syndicate imports of 1895, were obtained at the Bank of France.

have been artificial too. If the Austrian syndicate forced the one, it must have forced the other. Later experience proved that with a decline in New York sterling rates, even the Austrian agents could not draw.¹ Now the only way in which high prices can be forced, in foreign exchange or in any other market, is through buying. But the gold-shippers, by the nature of the case, were sellers. A New York banker who exports gold must pay for it by a draft on its foreign consignee, exactly as if he exported wheat or cotton, and he must sell the draft to an American remitter. These are the elementary principles of international exchange. But if the gold-exporters were sellers of exchange, their operations unquestionably tended towards the depression of sterling rates. Men who stand publicly in an open market for nine consecutive months as daily sellers, and who never buy, are not ordinarily accused of fostering high prices. Censure, if it arises, commonly bases itself on an inference exactly opposite. The really remarkable fact is that although \$33,000,000 worth of "gold bills" were sold at New York during the first half of 1892, in June exchange was higher than in January. During April, 1893, with the gold-exporters selling \$5,000,000 exchange per week, demand rates rose from \$4.88 to \$4.90. Such a phenomenon cannot be explained except by the assumption that some economic force of enormous power was driving the sterling market upward. I shall have written to little purpose if any reader doubts what this propelling agency actually was.

The destination and nature of the heavy exports were, then, matters of little consequence. If the German bankers had not shipped with sterling at \$4.88, there can be no doubt whatever that rates would have risen to \$4.89, at which the standard commercial firms would have become exporters. The experience of 1895 has proved this finally. But another turn in events which now developed had far more serious meaning.

¹ The break in exchange at New York during the panic of 1893 completely upset the plans of the Austrian syndicate. Bankers who had contracted to deliver gold to them were forced into the French and German markets, where they had to bid a high premium for gold bars. Von Mauthner; also *Economist's* Berlin correspondence, 1893.

Until 1892, all gold taken for export from the Treasury was paid for in gold certificates. Such a transaction of course made no reduction in the Treasury's gold reserve, which is computed by deducting from aggregate gold holdings the certificates outstanding. At the close of 1892 the United States Treasurer wrote :

No legal tender notes, in any considerable amounts were presented during this period for redemption. . . . But with the beginning of July [1892] an altogether different condition of things set in. On the first day of the month three millions in gold was taken for export, for which the Treasury received two and a half millions in United States notes and Treasury notes, and only half a million in gold certificates. Of the ten millions in round numbers exported in the month, four millions was paid for in United States notes, four millions and a half in Treasury notes, and only a million and a half in gold certificates.¹

It was not long before the use of gold certificates in payment for export gold ceased altogether.

The effect of this new policy on the Treasury's gold reserve was decided and disastrous. From October, 1891, to September, 1893, inclusive, exports of gold footed up \$154,256,615. During the same period \$60,400,287 United States notes and \$52,171,860 treasury notes of 1890 were presented for redemption; so that \$112,572,147 of the total exports were met by withdrawals from the Treasury.² But for the fact that the use of gold in revenue payments was still at times considerable, this drain two years ago would have exhausted the reserve.

¹ Report of Treasurer Nebeker, 1892.

² Report of United States Treasurer, 1893. This report contains also the following interesting table of redemptions of legal-tender notes in gold, by fiscal years ending June 30 :

1879	\$7,976,698	1884	\$590,000	1889	\$730,143
1880	3,780,638	1885	2,222,000	1890	732,386
1881	271,750	1886	6,893,699	1891	5,986,070
1882	40,000	1887	4,224,073	1892	9,125,843
1883	75,000	1888	692,596	1893	102,100,345

It will be seen that presentation of legal tenders for redemption in gold was not wholly a novelty in 1892.

There has never been any thorough examination of this episode. It will be useful, therefore, to inquire the cause and meaning of so radical a change of policy. If gold was exported in 1891 without drawing on the Treasury reserve, why was it not obtained outside the Treasury in 1892? The sterling banker, in the first place, draws habitually on his London correspondent to supply remittances for American importers who have foreign debts to pay. To "cover" his own draft on the London house, when ordinary trade bills are not obtainable, he exports gold. If at such times the importer did not have the gold-shipper's draft with which to pay his foreign creditors, he would be forced to export gold himself. Something not wholly unlike this took place in 1895.

The merchandise importers who buy the banker's drafts pay him in checks on New York banks. These checks the sterling banker turns over to his own bank of deposit, and asks for gold against them. It is extremely improbable that he himself will have the gold on hand. During the month of June, 1892, for instance, one New York house exported, against its sterling drafts, \$7,000,000 gold. No firm of private bankers maintains in cash a sum of any such magnitude. But neither did any single bank in New York City, at the opening of 1892, hold in reserve as much as \$7,000,000 gold. What happened, prior to 1892, was exactly this. The gold-exporter's bank, receiving on his deposit the merchants' checks drawn upon other local institutions, would pass them through the clearing house next day. A heavy credit balance to the gold-exporter's bank was thus created, which the several debtor banks had to meet in cash. Now if such balances were paid in gold or in gold certificates, the foreign settlement was easily provided. The sterling banker had in effect drawn on the aggregate gold reserve of the New York Associated Banks. This was his expectation, up to 1892.

But suppose the clearing-house balances are not discharged in gold. The depository bank alone cannot long continue to provide gold for its depositor. At best its individual reserve of gold, with exchange at shipping rates, would meet the

export needs of only a week or two. Then it must offer notes. But notes cannot be used by the sterling banker to meet his foreign debit. This was precisely the situation of 1892. It is the situation which arises repeatedly abroad. In London it is the commonplace of financiering for the gold-exporter to carry notes to the Bank of England for redemption. The New York gold-exporters of 1892 followed the London practice, and tendered the notes for redemption at the Sub-treasury.

This fact does not, however, explain the admitted change in policy. The gold-exporters resorted to the Treasury in 1892 because the clearing-house banks had ceased to pay the bulk of their mutual balances in gold. But why had such payments ceased? The answer, like that to every other question evoked by recent currency disturbances, throws us back on the law of 1890. Before the treasury-note inflation, gold was the natural money of exchange between the New York banks. The paper currency was needed for interior remittances and for local retail trade, and it was not then in excessive supply. The Eastern banks, therefore, were virtually compelled to discharge their clearing-house balances in gold, which they could not readily ship West, or in gold certificates of large denominations. But the wholesale issue of Treasury notes completely upset this trade adjustment. Interior institutions were now supplied with currency in great excess of need for their own transactions. Instead of drawing legal tenders from New York, they shipped their own idle currency holdings East. The stock of legal tenders reported in New York bank reserves in the middle of 1890 was \$30,975,000; in the middle of 1892 it was \$60,000,000. Since this supply of legal tenders, under the Silver-Purchase Law, was inexhaustible, the banks followed a perfectly logical trade instinct in using them for payments. During the twelve months ending with September, 1890, the proportion of legal tenders paid in clearing-house balances was one per cent; in 1891 it was 35.1 per cent; in 1892 it was 57½ per cent.¹ Exactly the same

¹ Annual reports of the New York clearing house. Following are the figures of balances paid during several clearing-house years ending October 1:

phenomenon was visible in New York customs payments to the Treasury.¹ With this in mind, it is simple folly to talk of a "raid" upon the Treasury. Had the dealers in exchange not applied to the government for note redemption, they must either have bid a premium for gold, thereby publicly discrediting the currency, or else defaulted on their obligations. Nor is it any less frivolous to argue, as some respectable critics argue even now, that the banks ought to resume the practice of supplying gold for export. If such advice had been followed in 1892, and the banks, by some unusual personal agreement, had combined to continue providing gold for export, the shippers in the end would equally have been forced back upon the Treasury. For the New York Associated Banks held at the opening of July, 1892, \$91,600,000 specie, including silver, and the gold exports from New York, during the next twelve months alone, were \$93,000,000.

On April 22, 1893, the gold expulsion having been continuous, the Treasury's gold reserve fell, for the first time since resumption, below \$100,000,000. The record of the ensuing twenty-one months is an exasperating chapter in our history. This period of uncertain makeshifts, private dread and official groping began with the indirect appeal of the nation's finance minister for the banks to give up gold for notes. In view of the circumstances already noticed, it is not strange that this proposition met with limited success. Something like \$15,000,000 gold was advanced by scattered institutions, and was immediately engulfed in the specie exports. On the vicissitudes of the panic year we need not linger. Its one

	<i>Gold Coin and Certificates.</i>	<i>Treasury Notes.</i>	<i>Legal Tender Certificates.</i>	<i>Legal Tenders and Minor Coin.</i>
1890	\$1,735,316,000	\$6,914,000	\$4,995,000	\$5,815,145
1891	1,028,443,000	102,435,000	353,510,000	100,247,500
1892	791,022,000	357,971,000	483,350,000	229,157,000
1893	168,628,000	584,613,000	188,120,000	525,063,000
1894	244,261,000	362,301,000	238,200,000	552,360,000
1895	1,415,000	15,436,000	1,009,405,000	870,318,349

¹ In 1889 the percentage of gold certificates in these payments averaged above 85. In 1890 the percentage ran up to 95 $\frac{3}{4}$, while payment in legal tenders averaged below three per cent. In June, 1892, only eight per cent was paid in gold, 26 $\frac{3}{4}$ per cent in United States notes, and 49 per cent in treasury notes.

essential incident was the repeal of the currency law of 1890. Repeal stopped further currency inflation, but it could not undo the mischief of the past. Hence it had only temporary effect. At the close of 1893, with the gold reserve at \$80,000,000, Secretary Carlisle intimated the administration's purpose to fulfill the law of 1875. In February and November, 1894, two issues of five per cents for \$50,000,000 each were sold to the New York banks. The experiment failed, however, to maintain the gold reserve, for reasons which we shall see were entirely logical. Midway between these two loans of gold at five per cent, the same New York bank subscribers were induced to lend the government \$5,000,000 gold for nothing. In the one case the government borrowed on its bonds; in the other on its non-interest-bearing notes. Designed as it undoubtedly was for the public good, this mixture of gifts and bargains was most extraordinary. The performance was repeated as lately as the present autumn (1895), when the banks again were prodded up to turn over gold for notes. The whole series of "reimbursements" was as loyal in its motive, as foolish in its economy and as utterly fruitless in its net results, as the fabled tender of British family plate to Pitt's embarrassed government a hundred years ago.

The failure of 1894's two bond issues to sustain the Treasury was due to the fact that they hardly touched the real root of the evil. Had the use of money in interior trade been active, it is probable that the withdrawal from the money market of \$58,660,917 in February and of \$58,444,900 in November would have created a perceptible void in circulation, contracted the discount market, raised the money rate and checked the demand for export gold. If only the \$117,000,000 realized from the sales had been kept in any form of money in the Treasury, some depression in foreign exchange must have ensued. But trade was at its lowest point of dullness and stagnation since 1884; the surplus reserve of the New York banks, even after the loan of November, stood at \$33,000,000;¹ and

¹ After the full payment on the loan of February, 1894, the surplus reserve stood at \$74,536,825. Immediately before that payment the surplus reserve was \$111,623,000.

the Treasury's continuing deficit threw five millions every month back on the money market. As a consequence, the true cause of the trouble — the enormous relative oversupply of currency — remained operative ; call loans, even during payment for the bonds, remained at one per cent;¹ and with the symptomatic high foreign-exchange rates, gold exports continued.

A possible belief that mere money withdrawals by the Treasury would check the specie exports, and thus protect the gold reserve, is the only apology for one part of the action of the New York institutions. They subscribed, indeed, in full for both the bond issues, and at prices which the open market failed subsequently to maintain.² They thus upheld, at their own considerable loss, the credit of the government. But the government bonds were, by law and by common understanding, issued explicitly to keep good the Treasury's gold reserve. It can hardly, therefore, be recalled as a creditable episode in banking, that of the \$58,660,917 gold coin paid for the first bond issue, \$24,396,459 was obtained by redemption of legal tenders at the Treasury.³ Tacitly recognizing the character of the January incident, an agreement was required by the organizers of the November syndicate that no gold for this subscription should be taken from the Treasury. And none was so withdrawn ; but by a very questionable subterfuge many subscribers to the loan borrowed the coin for payment, largely on gold notes at thirty days, and when the time arrived for settlement of the notes they once more withdrew the requisite specie from the Treasury. In December the Treasury lost by such withdrawals \$22,000,000 more gold than was exported.⁴

¹ In the week of payment to the Treasury on account of the February loan, call-money rates in New York went no higher than $1\frac{1}{2}$ per cent, and receded from that to one-half of one per cent. When the November loan was being paid over, three per cent was touched on one day for call money ; but $1\frac{1}{2}$ was the average even for that week, and the one per cent rate ruled again almost immediately.

² The February issue was taken at or above the price of 117.223, the November issue at the uniform price of 117.077. In January, 1895, these bonds sold at 116 $\frac{1}{2}$, in May at 115, in October at 116 $\frac{1}{8}$. The whole premium originally paid has never been recovered.

³ Monetary Systems of the World, by Deputy-Assistant United States Treasurer Muhleman, Historical Appendix.

⁴ *Ibid.*

These were times when the ordinary rules of sober trade seem to have been forgotten; there was incipient panic.

IV.

We now approach the government's operations in the loan market of 1895. The actual situation with which, at the opening of that year, the government was confronted, must first be summarized. From \$111,000,000, after the November loan, the Treasury's gold reserve had fallen by the second week of February to \$41,340,181.¹ Every possible measure of relief, based on domestic interests, had been tried in vain; prices were falling rapidly in all the markets, and a suspension of specie payments was discussed as an early probability. Such was the panicky rush of foreign capital for transfer to Europe before the anticipated crash, that sterling exchange advanced above the normal export point, and the weekly gold exports from New York increased during January from \$2,350,000 to \$7,700,000. A few days more of such gold withdrawals would have forced virtual suspension;² another month of them would have exhausted the Treasury's entire reserve.

The government had no card left to play except its foreign credit, and in view of the Treasury's situation and of the failure of the two bond sales of 1894, there was grave doubt whether its credit was not materially impaired. Acting undoubtedly under the spur of critical necessity, a contract was signed on February 8 with the New York representatives of the most powerful domestic and foreign banking interests. The terms of

¹ Daily statement of balances, United States Treasury.

² The Treasury actually did fall to a position where it could not, in a possible emergency, have met even the demands of holders of gold certificates. The official daily report of February 11 showed that against \$52,579,579 gold certificates outstanding, the Treasury held only \$50,934,516 gold coin. It held, of course, a large additional sum in gold bullion, but certificate-holders were entitled to coin. The gold coin in the New York Sub-treasury was reduced on February 2 to \$9,700,000. A few days later the Secretary of the Treasury received a telegram from the Assistant United States Treasurer at New York saying that it might not be possible to continue gold payments more than one day longer. — Interview with Assistant Secretary Curtis, published February 25.

this contract were hard,¹ and it was not easy to bring the administration and the bankers to agreement. The situation, however, was too critical to admit of the least delay, and after four days of dispatches between the Treasury and the syndicate representatives, the bargain was closed upon the bankers' terms.

It is not my purpose to discuss either the political aspect or the mere bargain aspect of this operation. It undoubtedly did cut down the quoted credit of the United States, though this was a temporary matter.² It is probable that no great fiscal operation in recent history has been so hastily concluded. It was, however, perfectly plain that the administration had no choice but to accept the syndicate's proposition or suspend government specie payments.

There was one clause in the contract which marked a decided line of difference between this bond issue and those of 1894; there was another which was a novelty in finance. The first of these was the proviso that one-half of the coin deliverable should be obtained in and shipped from Europe. The second, on which hung the most interesting of this year's operations, read as follows:

¹ By the terms of the contract the government bought 3,500,000 ounces of gold, the authority for this form of contract being a statute of March 17, 1862, providing that "the Secretary of the Treasury may purchase coin with any of the bonds or notes of the United States, authorized by law, and upon such terms as he may deem most advantageous to the public interest." Revised Statutes, § 3700. The contract price for the gold was \$17.80441 per ounce, to be paid for in four per cent bonds for \$62,314,435. But as the regular market price of standard gold was \$18.60465 per ounce, the actual value to be received in gold was \$65,116,275, or a premium of 4.49 per cent over the face value of the bonds. These were thirty-year bonds, and were sold thus at nearly 104½; the outstanding four per cents, with twelve years more to run, sold in open market during the preceding week at 113½. The price on the new issue was equivalent to a net interest rate of 3¾ per cent paid by the government, against a net rate of 2¾ and 3 per cent paid for the loan of January, 1894. The syndicate made, however, an alternative proposition for three per cent bonds, with stipulated payment in gold, at par. This was referred to Congress, and was rejected by that body.

² Although the old four per cents fell from 113½ to 110½ within a month, they recovered all this loss by June. Originally taken at 104½, the new bonds were marketed by the syndicate, eleven days later, at 112¼, which has been the ruling open market price this autumn. The Hungarian four per cents issued in the Austrian operations of 1893 were taken by the syndicate at 92 and sold at 93½.

In consideration of the purchase of such coin, the parties of the second part, and their associates hereunder, . . . will, as far as lies in their power, exert all financial influence and will make all legitimate efforts to protect the Treasury of the United States against the withdrawal of gold pending the complete performance of this contract.

Economically considered, the required delivery of one-half the \$65,000,000 gold from European reserves has two very different sides. We have seen that the failure of the loans of 1894 to check gold exports was due chiefly to the fact that the currency, despite withdrawals by the Treasury, continued redundant. From this point of view, therefore, the stipulated addition of \$32,500,000 foreign gold to the general currency supply was clearly illogical. Ordinarily governments borrow abroad either because domestic supply is insufficient, or because they do not wish to disturb the domestic money market. But neither motive was present with the United States in 1895. The experience of 1894 had proved both that domestic gold was to be had in sufficient quantity, and that its withdrawal did not appreciably contract the money market. On the other hand, the primary purpose of the loan was to raise gold, and the two loans of 1894 had also proved that although gold could be obtained by the Treasury from American institutions, it would be taken back into the bank reserves through redemption of legal tenders. This was equivalent to saying that gold could not be positively secured on a domestic loan. Theoretically, the banks were equally at liberty to increase their own specie holdings by withdrawal of gold contributed by foreigners; practically such a result was not conceivable. An economic argument on this phase of the question is as difficult as economic discussion of the action of the banks in 1894. The two questions are indeed inseparable. It is safe at least to say that if the withdrawal of Treasury gold pending the loans of 1894 had any justification, it must have been justified by inability of the banks to spare their own. Such a conclusion pointed, as the practical solution, to a foreign loan.

It has been assumed, in some quarters, that half of the issue of 1895 was placed abroad in order to establish a standing foreign credit. Against such credit, it has been inferred, exchange was to be drawn in sufficient quantity to depress the sterling market, supply American remitters, and check exports of gold. This plan was adopted, distinctly for such purpose, during our government's foreign-loan negotiations of 1873,¹ and it was mooted by Secretary Sherman in 1879.² Clearly, however, nothing of the kind could have been contemplated by the contract of 1895. The terms of that instrument called for the sale to the government of 3,500,000 ounces of gold, one-half of which was to be "obtained in and shipped from Europe." But this established no foreign credit fund on which to draw exchange. It is when the gold is not imported that sterling bills are drawn. It is true, however, that four months later the contract was modified by mutual consent so that only \$14,500,000 gold in all was shipped from Europe. The reason for this modification was that nearly \$18,000,000 of the four per cents sold abroad had been resold to the United States. This had not been anticipated, and it was deemed best to assume that foreign gold against the \$18,000,000 syndicate subscriptions had been duly imported, and that an equal amount had been reexported to pay for the American repurchases. It was "cleared," therefore, by the payment to the Treasury of \$18,000,000 domestic gold held by the syndicate at New York.³

¹ The house of Rothschild received \$6,400,000 U. S. bonds that year, "in payment of which they gave a letter of credit. The amounts paid on the same (through sterling drafts sold in New York) were credited thereon until the total amount was extinguished." — Letter of the Treasury agent in London to Secretary Sherman, April 3, 1879.

² "Can you suggest any way by which an arrangement can lawfully be made for exchange in London, say to the amount of \$10,000,000, in April or May, to be drawn upon if necessary? In case of a considerable shipment of gold, such a resource might be of advantage in preventing popular alarm." — Sherman to Treasury's London agent, March 15, 1879. The agent proposed a repetition of the plan of 1873 — sales of exchange by the Treasury's New York agents, "the proceeds of each bill of exchange sold . . . to be immediately paid into the sub-treasury in New York as a receipt on account of the sales of bonds." This experiment was not tried, however, in 1879.

³ This explanation is official. But it should also be mentioned that a large Austrian order for gold, which was being placed in New York during May, was provided from the syndicate's stock of gold in London.

But by far the most important part of this transaction was based, not on the gold deliveries to the Treasury, but on the very intangible pledge to "exert all financial influence . . . to protect the Treasury . . . against the withdrawal of gold." Let us see what this pledge involved.

Since the gold withdrawals from the Treasury resulted from gold exports, it became the first necessary undertaking of the syndicate to arrest the specie movement. The gold shipments, which had risen in weekly volume by the close of January to \$7,700,000, went out because remitters could obtain no exchange drafts except those of gold-exporters. Therefore, the only means of checking further shipments was to supply exchange. In other words, if the syndicate bankers were to offer their own drafts on London at or below the price accepted by gold-exporting houses, and were not to "cover" their own sales by remittances of specie, the needs of American buyers of exchange would be satisfied without a drain upon the Treasury. This is exactly what the bankers did.

But the undertaking was by no means as simple as this description indicates. Sales of exchange are practically contracts to deliver, at a stipulated distant spot and to stipulated parties, a sum of legal money. If the contractor holds a claim on a solvent debtor at that spot, he may order the debt to be discharged through payment to the holder of his contract. This would effect delivery. If the contractor exports gold to his agent at the stipulated place, the contract may quite as readily be discharged. But the market of 1895 was such that New York claims on foreign debtors could not be had in sufficient quantity to meet remitters' needs, and our supposition is that the syndicate was not to "cover" its own sterling drafts in gold. In such a case, the contractor must provide through other sources for his European delivery. He may conceivably hold on deposit, at the spot agreed, the stipulated sum. If not, he must borrow it in that market for delivery. As a matter of practice, this second alternative is invariably adopted.

But how much London borrowing would the syndicate's experiment necessitate? We have seen that even in the

twelve months ending with June, 1893, upwards of \$90,000,000 in gold was sent to Europe ; which meant that in New York City \$90,000,000 bankers' sterling drafts had been absorbed at high prices to supply remitters' needs. Under the strain of providing gold for this the national Treasury had broken down ; a private banking syndicate could hardly accept the chance indifferently. Nor could any banking firm or combination of banking firms borrow \$90,000,000 on their note for delivery in London.¹

The syndicate's calculation was, however, that so enormous a transfer of capital would not be called for. Only on such assumption was their undertaking rational. Much of the heavy demand for exchange on London in 1893 and in the ensuing year had its basis in the unwillingness of foreign creditors to leave their funds in the United States, with government insolvency impending. The simple terms of the contract of the syndicate would largely check that movement. There was a further possibility. If foreign purchases, whether of American merchandise or of American securities, were to expand beyond the volume of our purchases from Europe, drafts on New York would presently be as hard to get in London as foreign drafts were in New York in January. In such event the syndicate, having control in New York City of the receipts from previous sales of its exchange, could sell through its London representatives, at profitable rates, its own drafts on New York. Every draft thus sold would provide the means of canceling that much of the syndicate's London debt. Eventually, it might be possible thus to discharge the whole.

First, however, a selling price had to be fixed for the syndicate's exchange. In open competition, it was not easy to say what the price would be. If gold shipments were to be

¹ This will explain the reservation in the syndicate's contract to protect the Treasury — "as far as lies in their power." Unusual and indefinite as such a pledge at first appears, it is clear that any more positive engagement would have been Quixotic. In September much excitement was caused on the New York stock market when one of the firms in the syndicate, which had not shipped gold all summer, withdrew \$2,500,000 from the Treasury for export. The fact was that the firm's correspondent cabled that its line of London discounts had grown too large and must be "covered."

stopped, the syndicate must sell its bills below the rate at which any competitor could "cover" a sterling draft in exported gold. Now gold had been shipped, within three years, with rates as low as \$4.87½, and there was no certain assurance that this would not occur again. But if the syndicate sold exchange below \$4.87½, and later lost control of the sterling market, it might be forced to buy some one else's foreign drafts to pay its London debt, and the price then ruling might be the maximum of exchange.¹ If the bankers sold several million pounds of sterling drafts at \$4.87, and had to "cover" subsequently at \$4.89, they stood to lose heavily. This was the first embarrassment. It was met by a most extraordinary move.

To insure a market at the highest rates, without fear of lower sales by gold-exporters, the sterling market was first swept absolutely clear of competition. Practically every New York banking house with large foreign connections was admitted to the syndicate. Each of these houses was allotted at low rates a liberal share of the new government loan, the condition of allotment being that which the syndicate imposed upon itself, to ship no gold and to sell no sterling drafts except at highest prices. Here was the first use made by the syndicate managers of their profits. The result was soon apparent in the market for exchange. During the preceding year, American merchants with foreign dues to pay had been able to obtain a gold-exporter's draft on London at \$4.88½ or less. After the syndicate had bound its fellow-bankers, the uniform price for sight sterling was \$4.89 or higher.² During July, in fact, the so-called "syndicate rates," which meant the only rates at which drafts were then obtainable, were fixed at a minimum of \$4.90. This was fully one cent in the pound above the point at which drafts on London could be profitably covered by specie shipments. It signified that an American

¹ The effect would, of course, be the same if it were to ship gold at, say \$4.89.

² Demand exchange broke to \$4.88 in the week when the contract was announced, but this was a temporary matter. It was largely due to outside sales based on an erroneous notion that the syndicate would be forced to compete with the gold-shippers, and thus to establish lower rates.

importer wishing to settle a trade debt of £100,000 in London, must pay his banker \$490,000 for the draft, whereas in 1894, with free competition in exchange and with sales of drafts on London covered in export gold, he had paid no higher than \$488,500. In other words, the remitter lost, through the operations of the syndicate, \$1500 on every £100,000 remittance.

This fact discloses at once the project's economic weakness. It was to all intents and purposes a forestalling operation. The syndicate had not, strictly speaking, cornered the market for exchange; but it undertook to control the sources of supply and to mark up prices—which is quite equivalent. Such situations commonly regulate themselves. Experience teaches that in market “corners,” direct or indirect, the most careful possible control of visible sources of supply has invariably failed to insure success. Some source of supply, able to fill current demand at lower prices, will usually be overlooked; if not, some new source, hitherto unheard of, will be discovered. The action of this economic law, in the face of the syndicate's skillful operations, is the chapter of foremost interest in the experiment of 1895.

The syndicate began, however, with the market under complete control. Gold exports ceased at once,¹ stock-market prices rose and confidence returned—though slowly, for the syndicate's moves were watched with much misgiving. Through February, March and April, the allied bankers met at the regulated price all demands for drafts on London. No gold was withdrawn from the Treasury; the domestic gold due under the contract was paid within three weeks; five millions monthly came to the government by the European steamers, and by June 25 the \$100,000,000 reserve was again intact. This was not all. The recovery in confidence affected Europe too. Berlin and London were full of capital seeking remuner-

¹ So sudden was this check that in the week of the contract's promulgation some \$7,000,000, which had been withdrawn from the Treasury on Friday and packed for export, was taken off the steamer before it sailed and was returned to the Treasury in exchange for notes.

ative investment; the "Kaffir kings," fresh from the marketing of their African gold-mine shares at enormous premiums, were ready for new fields of speculation, and between the investors and the speculators, a sudden European demand for American securities set in which forced up the scale of values with amazing rapidity. For three weeks during May, every east-bound European steamer, instead of taking gold, carried out shares and bonds of American corporations. A dozen or more American railway companies, whose panic economies had made necessary fresh capital for improvements, sold new bonds at good prices in the foreign markets. From \$4.89, the syndicate's minimum, sterling exchange fell to \$4.86 $\frac{5}{8}$, or parity. This was a sign that drafts on New York City were in high demand by London debtors, and this demand the syndicate now supplied. It probably then repaid all, or nearly all, of its London borrowings, drawing upon its New York capital. Had not the syndicate stood forth then to supply the needed drafts to Londoners, it is probable that the United States would have imported gold.

The bond syndicate seemed at that moment to have achieved complete success. As a matter of fact, its real perplexities were still before it. The foreign buying ceased almost as suddenly as it had begun. By the time that the syndicate had covered its "short" exchange, sterling rates had advanced again to the former high level. Some of the foreign buyers sold back our securities at the higher prices, and took their profits. Later on, when half of the government four per cents were delivered to the foreign subscribers, large amounts of these securities too were resold to the United States; for the New York price was higher than that of London.¹ But what was most serious of all, the economic law of a disordered currency,

¹ This is always a serious obstacle in the way of permanent relief through foreign loans. It was a source of continual embarrassment to Austria in 1893, when the rise in foreign exchange, previously alluded to, was forced by re-sales to Vienna of the new bonds lately placed in Berlin. It threatened at one time the success of our own resumption of 1879. In 1877 the syndicate was forced to buy United States bonds in the open London market to check their return to New York.

whose penalty Congress had defied and the syndicate for the time had averted, began again to operate. For, let it be observed, the bankers' operations had dealt with symptoms and consequences ; they did not and could not touch the cause. More than this, it presently appeared that these operations were serving in some degree to aggravate the evil. The currency was overcharged ; money was still heaped up in great excess at New York City. With reviving credit, industrial trade and prices had revived. But neither trade nor prices had yet returned to the level of 1892, and in 1895, as in 1892, two to four millions weekly of interior currency were flowing to New York City. Gold exports, whatever their other evil results, would in a measure have relieved this currency congestion. But no gold was released, the heap of currency grew larger,¹ and as foreign capital no longer found employment, drafts for its transfer back to Europe were in strong demand. Meantime, however, throughout the month of June the syndicate's control of the sterling market remained unbroken, and \$4.90 was the minimum price for demand exchange.

But in July something happened which occurs invariably at one stage of a market "corner." I have already said that when all visible sources of supply in such a market are controlled, new sources, in some unexpected quarter, are sure to be discovered. Every New York banker commanding large local and foreign capital had been identified with the syndicate; the motive for such union being undoubtedly as much the wish to help the government as the hope of gain. Indeed, most of the bankers lost eventually through their abandonment of the open market. But with the syndicate houses selling no exchange below \$4.90, and with a trade profit in specie shipments to cover sales at \$4.89, a New York firm previously

¹ Some effort was apparently made, during the summer, to withhold absolutely from the loan market the syndicate's local capital, accumulated through its sales of sterling. To do this, the money had, of course, to be withdrawn from bank deposits and "locked up," possibly in the vaults of trust companies. There were strong evidences of such a process in the weekly bank statements during July. But this money was released on the return of guarantee funds to the syndicate's bank subscribers, and reappeared on the loan market and in bank reserves.

concerned in the coffee-import trade, but with powerful European connections, entered the market, offered exchange one cent below the syndicate, and shipping gold to make good its sterling drafts, withdrew the specie from the Treasury. The firm's first shipments of gold were apparently undertaken to discharge its own trade debts abroad. But it very soon extended its operations to the drawing of foreign exchange for the benefit of other trade remitters. When this happened, of course the house instantly had the market in its hands. The syndicate held to its former non-competitive exchange rates, and before three months had passed, \$34,000,000 of the government gold reserve had gone abroad.

This was in actual fact the end of the syndicate experiment. Throughout August and September, it is true, gold from the reserves of local institutions was paid into the Treasury for notes. The syndicate thus paid over some \$16,000,000; other banks contributed \$4,000,000 more. But this was purely a voluntary matter; it was the old and patriotic, but utterly illogical, "reimbursement" of 1894, of 1893 and of 1885. Even this makeshift failed to keep pace with the demand for export gold. It was only when the reserve had fallen to \$93,000,000, that the autumn movement of interior trade drew off the idle currency surplus at New York, and thus gave local employment to idle foreign capital. Then rates of exchange declined and the specie outflow came to a normal end. Thus the situation stands at this writing.

What, then, is to be our conclusion concerning this remarkable experiment? I have shown that the methods of the syndicate involved theoretically unsound economics, and that in at least one way its operations in exchange indirectly aggravated the evil whose consequences they were intended to avert. We have seen, too, that the distinct undertaking of the syndicate, to prevent export of gold withdrawn from the Treasury, broke down completely before the expiration of the contract. Are we then left to the conclusion that the experiment of 1895 was a failure?

If such a conclusion were justified by the abstract principles of political economy, it certainly would not be warranted by practical common sense. However faulty the theory of the undertaking may have been, the tangible results are of the highest possible value. To have saved the Treasury from imminent insolvency, and to have restored health and activity to private trade and credit, are no small achievements. The truth of the matter is, that political economy resembles all other sciences, in that its principles cannot be applied in practice with perfect rigidity. In every case of obvious disorder, science must discover first the actual cause of trouble, then the proper method of removing it. But because the remedy is discovered, it does not follow that it can instantly be applied. In 1895 the disease and the remedy were plain to the majority of educated minds ; but it was equally plain that the remedy could not immediately be used, and yet the patient could not wait. A quick and powerful palliative was applied, with a double hope : that partial return of economic health would enable the nation better to endure another strain, and that, with lapse of time, returning sanity in legislation would make possible the final cure.

Whether the syndicate experiment has accomplished more than this, is a matter of great doubt. Heavy interior trade at the harvest season has temporarily solved the problem ; the drain on the Treasury was stopped mechanically. But this is no assurance that, with the currency inflation left at work, relief will be more than temporary. In this regard, the teaching of our own experience is not cheerful. Increasing trade, as an absorbent of the surplus circulation, will do something to avert renewed embarrassment ; an increased surplus in the Treasury would do more. Conceivably, either might restore permanent prosperity. But 1891 showed for the one, as 1888 showed for the other, that unless the fundamental cause of mischief is taken courageously in hand, the country will probably enjoy only a breathing-space.

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THE DECREASE OF INTERSTATE MIGRATION.

THE question of migration, like that of free trade or protection, is frequently discussed on the tacit assumption that some mysterious change occurs when goods or men cross the boundaries of a country. The principles regulating the exchange of commodities or the movements of persons are, however, substantially unaffected by the presence of political lines. Viewed from the ordinary standpoint of politics and legislation, international differ widely from internal movements of goods or persons ; but as manifestations of social forces they are so closely related that results from the study of one may illumine the other. Hence, if interstate migration in the United States is relatively decreasing, and has been for about a score of years—the point I shall attempt to prove, and if this has happened without legislative regulation simply as a result of the action of social and economic forces, the fact, aside from its intrinsic importance, may justify the inference that, even if no further legislation be enacted, international migration, or immigration to the United States from foreign countries, will ultimately and perhaps speedily decrease.

I.

The only materials for a comprehensive study of the amount of interstate migration are afforded by the national census reports since and including 1850, which record the birthplaces by states¹ of the natives of the country. The tables here used are taken from the volume of the census report of 1890 which made its appearance in July, 1895.

The following table gives the general results at the date of each census of the preceding interstate migration :—

¹ For the sake of brevity I have included the territories and the District of Columbia under the generic term state.

DATE.	TOTAL NATIVES OF U. S. IN U. S.	NUMBER LIVING OUTSIDE STATE WHERE BORN.	PER CENT OF TOTAL.
1850 ¹	17,727,578	4,176,841	23.6
1860 ¹	23,353,386	5,829,681	25.0
1870	32,991,142	8,635,457	26.2
1880	43,475,840	9,593,106	22.1
1890 ²	52,966,041	11,094,430	20.9

From this it appears that the percentage of natives living outside the state of birth was 2.7 less in 1890 than it was in 1850. This percentage rose between 1850 and 1870, at the end of which period over one-fourth of the natives were residing in different states from those in which they were born ; but during the second score of years it decreased very considerably.

While, then, the number of persons inhabiting different states from those where they were born has steadily increased since 1850, the number of those who remain in their native states has increased since 1870 with considerably greater rapidity. The natives of the United States are showing a greater tendency to remain in the states where they were born. Whether they are also more prone to remain in the native counties or towns is a subject to be considered later. Before taking that up let us try to answer two questions : (1) From what states is this emigration greater than the average for the country? and (2) From what states has it decreased during the last decade?

(1) The general answer to the first question is best indicated by the following map, in which the shaded states are those which sent out a proportion of their native population larger than the average for the entire country.

This map indicates that the states east of the Alleghanies sending out more than the average proportion of emigrants are

¹ The figures for 1850 and 1860 do not include the slaves.

² In the figures for 1890 I have omitted the 396,652 natives who did not report the state in which they were born, and the 10,010 who are reported, somewhat oddly, as natives though born at sea or abroad of native parents. No such distinctions appear in earlier census reports.

Virginia, Delaware, New York, and the New England states except Massachusetts; and that those in the interior lie on both sides of the Ohio River and the upper Mississippi. There are also three isolated states further west.

It further appears that the only northeastern states with a stronger hold than the average upon their native population are those in which mining or manufacturing has notably increased of recent years, *vis.*, Massachusetts, New Jersey, Pennsylvania, Maryland and West Virginia.¹ On the other



STATES WITH MORE EMIGRATION THAN THE AVERAGE FOR THE COUNTRY.

hand, the largest area of excessive interstate migration is in the central states east of the Mississippi. How far the latter fact may be connected with the remarkable facilities for travel by water or rail in those states, and how far with the westward trend of the agricultural interests of the country, must be more or less a matter of conjecture.

The states with more than the average amount of emigration, arranged according to the percentage of natives living outside in 1890, rank as follows:—

¹ The figures for West Virginia are, however, questionable owing to the recent formation of that state. Persons born in what is now West Virginia before its organization as a state may have reported themselves as born in Virginia.

GROUP I.		GROUP II.	
STATES.	PER CENT OF NATIVES LIVING OUTSIDE.	STATES.	PER CENT OF NATIVES LIVING OUTSIDE.
Vermont . . .	40.9	Tennessee . . .	24.7
Nevada . . .	38.1	Wisconsin . . .	24.0
New Hampshire	34.1	New York . . .	23.6
Wyoming . . .	29.8	Kentucky . . .	23.2
Iowa	28.5	Connecticut . . .	23.1
Virginia . . .	28.2	Rhode Island . .	22.7
Delaware . . .	28.0	Kansas	22.0
Ohio	27.6		
Maine	27.5		
Illinois	27.1		
Indiana	25.9		

The first group includes all the states from which over one-fourth of the natives have emigrated, the second all from which between one-fifth and one-fourth have emigrated, and the two together all from which the emigration has been greater than the average for the whole country.

In interpreting this table it must be remembered that, other things being equal, a state of small area will show a greater amount of migration beyond its bounds than a large state. It is perhaps for this reason that Rhode Island and Connecticut, although manufacturing states, appear in the table. On the other hand, the fact that Texas has sent beyond its bounds a much smaller proportion of its native population than any other state, only 5.2 per cent, is in no small measure to be explained by its great size, which allows wide range within its bounds. The great region of increased migration is found in certain states of the north central group. The increase from some of them during the last decade has been very noteworthy. Illinois, Iowa and Kansas are the most conspicuous. In these states the per cent of the native population living outside was as follows :

	1880.	1890.	INCREASE.
Illinois,	24.47	27.13	2.66
Iowa,	22.77	28.48	5.71
Kansas,	16.51	22.03	5.52

The actual numbers may seem even more striking:

	NATIVES LIVING OUTSIDE.		INCREASE.
	1880.	1890.	
Kansas,	46,085	137,586	91,501
Iowa,	217,389	397,985	180,596
Illinois,	553,889	817,717	263,828

Between 1880 and 1890 over half a million natives of these three states alone must have migrated across a state line, an outflow equal to nearly one-tenth of the total immigration to the United States during the same period. So marked an increase of migration in this great and populous region makes it the more surprising that in the country as a whole interstate migration has diminished.

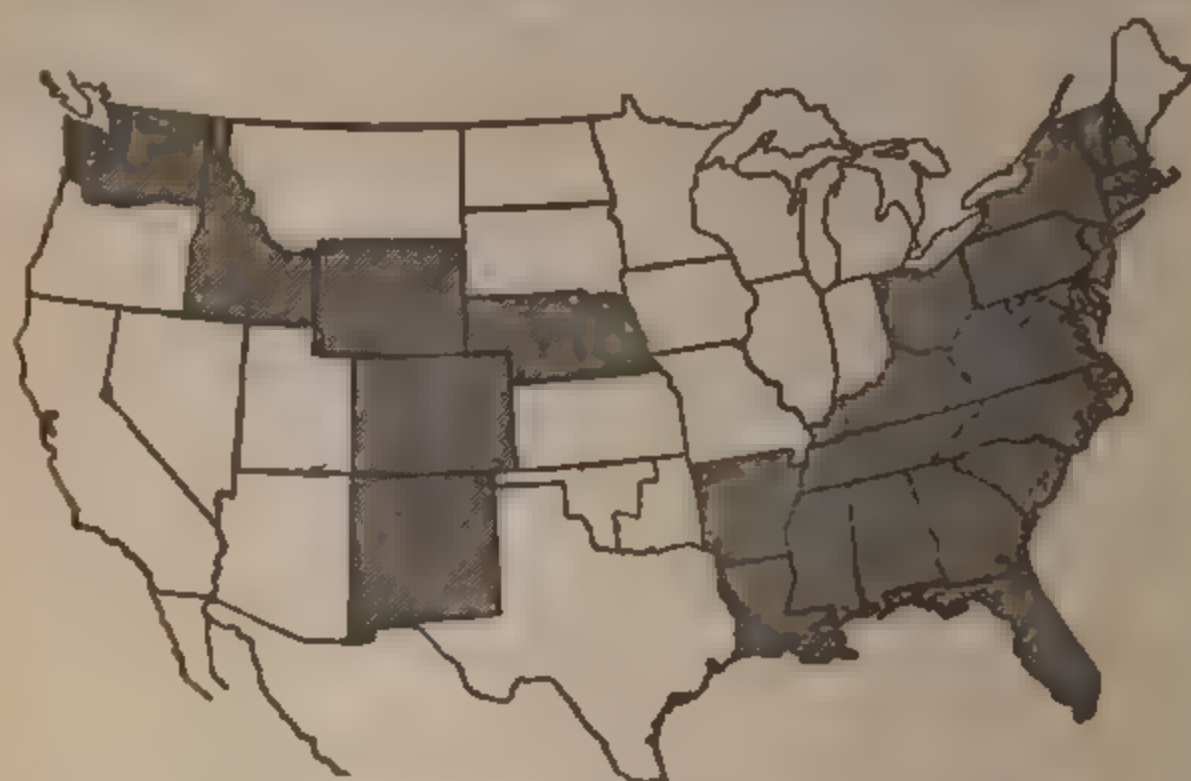
There is a general coincidence between the states which have sent out a large proportion of their natives and those which have shown a small increase of total population. Vermont and Nevada have sent out the largest percentage of emigrants, and at the last census they were the only two states failing to show any material increase of population. Between 1880 and 1890 Nevada lost 16,505 residents, and Vermont gained only 136. Of the twelve states increasing by less than fifteen per cent, ten — all but Maryland and Mississippi — appear among the states with emigration higher than the average. Such coincidences are due not merely to the subtraction of a large number of emigrants from the population, but yet more to the fact that the causes at present encouraging emigration, at least in the Eastern states, also discourage early marriage and the rearing of large families.

(2) Let us turn now to the second question raised above: From what states has emigration decreased during the past decade? This also may be answered best by a map, in which the shaded states are those of which the proportion of natives living outside was less in 1890 than in 1880.

This shows clearly the parts of the country in which the tendency to migrate across state lines has decreased. The six shaded states which make an irregular band across the country from Washington to New Mexico, have been so recently and

incompletely settled that the total of their native population is less than that of Maine or Arkansas. Hence they may be disregarded.¹ The map does, however, show an unbroken stretch of states from Maine to Texas, from which emigration has been relatively decreasing.

In attempting to compare by decades the movements of the populations of the various states, some trouble arises from the incompleteness of the available statistics. Before the emancipation the birthplace of the negroes who were slaves was not reported. Hence the facts for the Southern states in 1850



STATES FROM WHICH EMIGRATION DECREASED BETWEEN 1880 AND 1890.

or 1860 are not easily to be compared with those of the Northern states at that time or with those from any part of the country now. Furthermore it is probable that even at present the number of negroes who are unable to tell the state in which they were born is not inconsiderable. The only states, then, concerning which trustworthy information for the whole period since 1850 may be obtained are those of the northeastern group and a few of the north-central group. We may assume that for each state the decade preceding the

¹ It may be noted in passing that the great prosperity of Nebraska between 1880 and 1890 is illustrated by its retaining a larger proportion of its natives.

census year in which the largest percentage of natives was found residing in another part of the country was the period of maximum emigration. On this assumption that period for each of these states was as follows:

PERIOD OF MAXIMUM EMIGRATION.			
BEFORE 1850.	1850-1860.	1860-1870.	1880-1890.
Rhode Island, Connecticut, New Jersey.	Vermont, Massachusetts, Pennsylvania.	New Hampshire, New York, Ohio, United States.	Maine, Indiana, Illinois.

For all but three states, therefore, the period of greatest emigration was earlier than 1870.

A bit of corroborative evidence covering a slightly longer period of time is furnished by the records of the migration from New England to New York State. By combining information contained in the census reports of New York with other figures from the national census returns, the number of natives of New England resident in New York at successive periods is found to have been as follows:

DATE.	TOTAL NATIVES OF NEW ENGLAND IN UNITED STATES.	NUMBER IN NEW YORK STATE.	PER CENT OF TOTAL.
1845	2,660,441 ¹	228,881 ²	8.60 ¹
1850	2,821,823 ³	206,630 ³	7.32
1855		207,539 ³	
1860	3,144,588 ³	177,981 ³	5.66
1865		166,038 ³	
1870	3,293,003 ³	138,812 ³	4.22
1875		142,136 ³	
1880	3,643,424 ³	133,272 ³	3.63
1890	3,897,003 ³	116,005 ³	2.98

Thus, while the total number of natives of New England has steadily increased, the number residing in New York State

¹ Estimated.

² As given by New York State Censuses.

³ As given by United States Censuses.

has fallen almost one-half, so that of the total natives of New England in the country the proportion residing in New York, as shown by the last column above, is hardly more than one-third of what it was half a century ago.

Interstate migration, then, has relatively decreased during the last score of years both in the country as a whole and in nearly every one of the states east of the Mississippi.

II.

As regards the conclusion just reached it may be said that, even if interstate migration has decreased, it does not follow that what may be termed the mobility of the population, or the tendency to abandon the place of birth, has also decreased. It may simply have expressed itself in a different manner. While the dominant form of migration prior to 1870 was that from east to west, the dominant form since that time has been from the country to the city. The former usually oversteps state lines ; the latter, less regularly. The decrease of interstate migration, then, may be due merely to an increase of what may be termed intrastate migration. This hypothesis¹ seems the more plausible since the states in which large cities have sprung up or have rapidly increased are, generally speaking, the same as those from which a smaller proportion of emigrants than heretofore has gone out.

This criticism, it may be observed, does not deny the main conclusion here contended for, that interstate migration has decreased ; rather, it raises a doubt concerning the proper interpretation of that fact. It might, therefore, be ignored, and the reader left to draw inferences for himself in explanation. Such a course would be the more prudent, since it must be acknowledged that no conclusive answer to the criticism can be wrung from our national census reports. There is no way of determining with accuracy for the whole country the amount

¹ See a striking article in *The Forum*, August, 1895, on "The Drift of Population to Cities," by Henry F. Fletcher.

of migration from the small towns and rural districts of a state to the cities of the same state. In the gathering of information by the national census authorities each state has been treated as a unit, and intrastate migration ignored. Yet, in default of information for the whole country, the facts for New York State, Massachusetts and Rhode Island, derived from their state census reports, suggest the inference that the criticism is invalid; and that the natives of those states, at least, and presumably of others in their neighborhood, are increasingly disposed to remain in the counties or towns in which they were born.

In the New York censuses of 1855, 1865 and 1875 (unfortunately, no census worthy of the name has been taken in New York since 1875), the county was treated as the unit, and the county of birth was recorded for each native of New York State. From these data the following table has been constructed:

DATE.	TOTAL NATIVES OF NEW YORK IN THE STATE.	NUMBER RESIDING IN COUNTY WHERE BORN.	PER CENT OF TOTAL.
1855	2,219,809	1,637,903	73.8
1865	2,642,055	1,998,492	75.8
1875	3,202,704	2,205,719	78.2

During this score of years the proportion of the natives of New York who remained in the county of birth steadily increased. But it must not be forgotten that a state census can take cognizance only of the persons residing within its limits, and that during the above period from half a million to a million natives of New York were residing in other states and territories. I have attempted to introduce a correction by assuming that the number of natives of New York State resident in other states at the date of each state census was the mean between the numbers reported by the national censuses just before and after. By the aid of this assumption I have constructed a table and computed the following percentages:

PERCENTAGE OF THE TOTAL NATIVES OF NEW YORK STATE LIVING IN —	1855.	1865.	1875.
County of birth	56.0	55.3	57.8
Some other county of New York .	19.9	17.8	16.0
Some other state	24.2	26.5	26.2

This indicates that the proportion of the total natives of New York State residing in the counties where they were born decreased between 1855 and 1865, and that this was owing to the great increase of interstate migration ; for the intrastate migration, it will be observed, decreased. It further shows that between 1865 and 1875 the proportion of the natives of New York staying where they were born increased with some rapidity. These figures do not apply to the last twenty years ; but just when the New York censuses fail us the Massachusetts censuses begin to be especially valuable.

In Massachusetts, the town, not the county, is the unit in determining birthplace. The facts contained in the Massachusetts census reports of 1875 and 1885 may be expressed more simply than those for New York, as follows :

	1875.	1885.	PER CENT OF INCREASE.
Natives of Massachusetts whose birth-towns were known .	973,011	1,104,733	
Born in towns where residing .	596,971	700,813	17.4
Born elsewhere in Massachusetts	376,040	403,920	7.4

This shows that during the ten years preceding 1885 the number of migrants from town to town, but within the state, increased less than half as fast as the number who remained in the towns of their births. It has already been said that the proportion of natives of Massachusetts who migrated to some other state reached its maximum in the decade 1850–1860, and has steadily decreased since. The above facts show that intrastate migration has been decreasing during the only decade for which the facts can be ascertained. On the assumption that the number of natives of Massachusetts living in other states in 1875 and 1885 was a mean between the number reported by the national censuses of 1870, 1880 and 1890, the following table may be computed showing

PERCENTAGE OF TOTAL NATIVES OF MASSACHUSETTS		
LIVING IN —		
	1875.	1885.
Town of birth	48.61	51.00
Some other town of Massachusetts . .	30.62	29.46
Some other state	20.77	19.54

This indicates that the mobility of the native population of Massachusetts is slowly decreasing ; and in Rhode Island, the only other state in the country, I believe, affording like information, similar results appear.

These figures bring out the remarkable extent of the migratoriness of native Americans. In New York State probably about two-fifths of the native population leave the counties where they are born ; in Massachusetts about one-half abandon the towns of birth. It must be remembered, moreover, that these figures include persons of all ages. The migratory tendency of children under ten, or even under fifteen years of age, is much below the average. To be sure, they are often carried with their parents from the places of birth, but the parents themselves are less likely to migrate than unmarried or childless persons of the same age. The time that has elapsed since birth is also an element. The older one is, the less likely he is to be a resident of his birthplace. Hence if adults alone were considered, the migratory tendency would be expressed by much larger figures than those above.

Nevertheless, the general conclusion to which the facts point is that the mobility of the population of the Eastern states, as measured by the migration from state to state, from county to county, or from town to town, is slowly decreasing.

On the contrary, the information at hand leads me to believe that on the continent of Europe internal migration is increasing. This is certainly true of Sweden, Switzerland, Belgium and France. For example, the proportion of the population of France born in the *département* of residence was :

	PER CENT.
1866	88.4
1876	85.7
1886	84.0
1891	83.2

England shows an almost unchanging internal mobility of population. The percentage of the population born in the county of residence in England and Wales was:

	PER CENT.
1871	74.04
1881	75.19
1891	74.86

These percentages suggest that the maximum mobility of the English population may have been reached in 1871-81. While the English counties and the French *départements* are much too large and too populous for their internal migrations to be fairly comparable with the intercounty migration in New York, the mobility of the natives of the United States is certainly much greater than that of the natives of continental Europe, and probably greater than that of the English. If the mobility of the population of western Europe is slowly increasing, while that of the eastern United States is slowly decreasing, it is but another illustration of the general fact, often brought to the notice of the student of social statistics, that the social and economic conditions of the two regions are in various ways approximating.

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FIVE CENTURIES OF LIQUOR LEGISLATION IN ENGLAND.

I. *Development of the Licensing System.*

PARLIAMENT, which is now once more confronted with the problem of the regulation of the liquor trade, has been enacting measures to the same end since the middle of the thirteenth century. Until the middle of the sixteenth century, however, it imposed no check on the establishment of alehouses, contenting itself with fixing the price of beer according to the price of barley, and with giving the local magistrates powers to suppress disorderly alehouses. During this period the old municipalities also made some regulations for the control of these resorts, and imposed on alehouse keepers various duties and responsibilities.

The first legislative measure intended to restrict the establishment of new houses for the sale of beer was passed in the last year of Edward VI. The multiplication of alehouses and tippling houses was then, in the opinion of Parliament, causing intolerable hurt and trouble in the commonwealth ; and to prevent the continuance of this evil, it was enacted that no one should keep an alehouse unless licensed by the magistrates, and unless he gave recognizances for good behavior. Recognizances were abandoned in the early years of this century ; but since the act of Edward VI, except for a period between 1830 and 1869 when there was a system of free trade in beer, the local magistrates have always had a controlling voice in the licensing of drinking houses. This earliest of measures connecting the magistrates with the licensing system also provided penalties in cases where persons sold beer without magisterial permission. Such offenders were to be lodged in the common jail for three days, and were to give security not to repeat the offense.

For the next half-century Parliament gave little attention to the regulation of the trade. In the reign of James I the subject was again taken up, and several acts were passed aiming to regulate the traffic inside the licensed houses. The earliest of these acts, passed in the first year of James I, sought to define who should use public houses. It declared that the "ancient and true and principal use" of inns, alehouses and victualing houses, was for the "receipt, relief and lodging of wayfaring people," and for supplying the wants of such people as were not able to provide their own victuals; and further, that alehouses were not meant for the entertainment and harboring of "lewd and idle people, to spend and consume their money and their time in a lewd and drunken manner." Travelers were to be accommodated and entertained, as were persons invited by a traveler during his necessary stay. Laborers and handicraftsmen, on their usual working days, were also to be received for an hour at dinner time "to take their diet"; but others, who frequented alehouses only for tippling, were not to be received, and the harboring of them by an alehouse keeper or an innkeeper made him liable to a fine of ten shillings. There was in this enactment no recognition of a convivial use of an alehouse, except so far as the entertainment of a traveler's guests might come under that term. The fines collected under this act were to go to the benefit of the poor.

The next act, passed in 1607, was aimed at brewers who sold beer to unlicensed retailers. Such brewers were made liable to a fine of six shillings and eightpence. The act also set up a penalty for drunkenness, in a form which was continued until the middle of the present century. Drunkenness, in the opinion of this Parliament, was a "loathsome and odious sin" which had of late "grown into common use," and was the "root and foundation of many other enormous sins, such as bloodshed, stabbing, murder, swearing, fornication, adultery and such like, to the great dishonor of God and of our nation, and to the overthrow of many good arts and manual trades." Accordingly "all and every person" convicted of drunkenness

was made liable to a penalty of five shillings, to be paid within a week to the churchwarden for the use of the poor. If the culprit refused to pay, a distress was to be levied upon his goods ; if he had no goods, he was to be placed in the stocks for six hours. Furthermore, persons who haunted alehouses contrary to the previous act were made liable to four hours in the stocks.

These first two measures of James I seem to have had little effect in diminishing drunkenness, and in 1610 another effort was made to reach alehouse keepers who offended against the existing laws. It was set out in this act that notwithstanding all former laws and provisions, the "inordinate and extreme vice of excessive drinking and drunkenness doth more and more abound." To check it, any alehouse keeper who offended against the earlier acts of the reign was, on conviction, disabled from keeping an alehouse for a period of three years.

Each of the three laws just described was enacted originally for a limited time. At the end of the reign of James I a further act made their provisions permanent, and all three were still on the statute book when the licensing system was overhauled in 1828.

Early in the reign of Charles I tavern-keepers and wine-sellers were brought within the scope of the acts of James I ; and in 1627 a measure was passed for making more severe the penalties for violations of these acts. For those days the fines for unlicensed selling were large, and as experience showed, they could seldom be recovered. Moreover, when the offenders were sent to jail in default of payment, the cost of keeping them there, and also the cost of maintaining their families, fell on the parish. This expense made both constables and churchwardens chary of enforcing the law. Already, as we have seen, imprisonment in the stocks had been established as a punishment for people too poor to pay the fine of five shillings, when convicted of drunkenness. By the act of 1627 corporal punishment was provided for those who had sold ale without a magistrate's license and were unable to pay the fine. They were to be openly whipped ; and if a

constable neglected to put the law in operation, or failed to whip a defaulter, the constable was to be sent to jail and kept there until by his procurement the person convicted of the illicit sale was whipped. Cider and perry were, by this enactment, also brought within the scope of the licensing laws ; so that by 1627, all keepers of alehouses, inns and wine-houses, and all retailers of cider and perry — all, in fact, who then sold drink to be consumed on the premises — had been brought within the jurisdiction and under the control of the magistrates.

After the act of 1627, more than a century elapsed before Parliament passed another important measure for the policing of the liquor trade. One law enacted within this period — an excise measure rather than a police measure — is, however, noteworthy on account of one of its exemptions. It was an act authorizing the appointment of commissioners to grant licenses for the sale of wine by retail ; and the borough of St. Albans was excluded from its provisions, for a somewhat curious reason. The ancient Hertfordshire borough, it appears, held charters from Elizabeth and James I, authorizing it to erect, appoint and license three wine taverns, the profits from which were to go to the maintenance of a free school. The imperial exchequer is to-day furnishing technical education to thousands of young people throughout England by its annual grant of "the beer money" to the county councils ; but the St. Albans case seems to be the first in which a municipality devoted to public education money derived from the sale of intoxicating liquor. This exemption of St. Albans from excise legislation continued for centuries and was formally reenacted as recently as 1869. The universities also have enjoyed exemption from many of the licensing laws.

The earliest measure passed in the eighteenth century with a view to regulating and restricting a department of the liquor trade was that of 1736. At that time Parliament was alarmed at the drinking of spirituous liquors, which had become "very common, especially among the people of lower and inferior rank." It was apprehensive that this constant and excessive

use of spirits was tending greatly to the destruction of the health of the laboring classes, and "rendering them unfit for useful labor and business ; debauching their morals and inciting them to all manner of vices." To restrict what was then regarded as a national vice, Parliament established a system of high license. Retailers of spirits in quantities of less than two gallons were compelled to take out excise licenses costing fifty pounds a year. At the same time it was made a criminal offense for an employer to retail spirits to any of his work-people, or to pay any part of their wages in spirits. Licenses were issued only to persons who followed no other trade than that of keeping public houses ; and before they could obtain excise licenses, magisterial licenses had to be obtained from the justices of the peace. By the same measure, persons giving away spirituous liquor to servants or apprentices who had come to their shops for goods, were deemed to be retailers, and were made liable to the penalties imposed on those who sold spirits without a license.

A year later, as the "immoderate drinking of distilled spirituous liquors by persons of the meanest and lowest sort" was still on the increase, "to the great detriment of the health and morals of the common people," another act was passed to restrict the number of houses at which spirits might be sold. Two provisions, new in licensing legislation, were embodied in this act of 1737. One established a rating qualification for the holders of licenses ; the other excluded brewers, inn-keepers, distillers and dealers in spirits from sitting as local magistrates when applications for licenses were being heard. Both these provisions are in the modern system ; although during the free-trade era the rating qualification was abandoned in the case of houses in which only beer was retailed. The intention of the act of 1837 was to better the class of houses at which spirits were sold. It made it impossible for retailers of spirits legally to collect bills under one pound ; and it imposed heavy penalties on retailers who took articles in pawn in payment for drink.

In 1753, the laws concerning alehouses, inns and victualing

houses were still regarded as defective, and Parliament made another endeavor to weed out people of doubtful character engaged in the liquor trade. The system of compelling license-holders to give securities for the good order of their houses, first adopted in the time of Edward VI, was revived ; and an applicant for a license was compelled to give a bond of ten pounds himself, and to find two other sureties in five pounds each. Further, he had to obtain a certificate signed by the vicar and the majority of the churchwardens and overseers of his parish, or else by three or four reputable and substantial householders, inhabitants of the neighborhood in which the alehouse was to be established, setting forth that he was a person of good fame and of sober life and conversation. It was also stipulated in this act that the license was for a year only and was subject to yearly renewal by the magistrates. A man whose recognizances were broken was disabled from inn-keeping for three years.

This act of 1753 remained in force until 1828. Its clauses referring to the clergy help to explain how it was that in the closing years of the last century the clergy in the large towns, such as Manchester, were able to bring pressure on the publicans to prevent them from allowing their houses to be frequented by the advocates of Parliamentary reform.¹ It is obvious that the act of 1753 placed the publicans almost as much in the hands of the clergy of the Church of England as in those of the magistrates. The granting of a license was entirely within the discretion of the local magistrates, and until well on in this century there was no appeal from them. Yet without the clergyman's sanction an applicant for a license could not hope to get his application before the magistrates.

Two other acts in the reign of George II are significant. One compelled retailers of beer in workhouses, prisons and houses of correction to take out licenses. In some of these places the consumption of beer in the days of the unreformed poor-law and unreformed prisons must have been large ; for as late as Lord Kenyon's tenure of the chief-justiceship of the

¹ Prentice, *Personal Recollections of Manchester*, pp. 7 and 8.

King's Bench, which lasted from 1788 to 1802, the privilege of supplying beer to prisons was regarded as political spoils, and was sought by one of the largest brewing concerns in London as a reward for political services rendered by the firm. The other act, like that of James I, took cognizance of what was going on inside licensed houses, and forbade license-holders to permit laborers, journeymen, servants or apprentices to play cards, dice, draughts, shuffle-board, billiards, skittles or ninepins within their houses, outhouses, grounds or apartments.

Little change was made during the reign of George III. In 1798 an act was passed which in itself is evidence that many magistrates in the old municipal corporations were disqualified from adjudicating licensing cases by reason of their direct or indirect connection with the liquor trade. It provided that where borough magistrates were thus disqualified, justices for the county at large, who under ordinary circumstances had no jurisdiction in incorporated towns, should, at the request of the chief magistrate, take part in the licensing business before the borough bench, all law, custom or usage notwithstanding. The years of political unrest which followed the peace after Waterloo, when the Reform agitation once more disturbed the country, left their mark on licensing legislation in the shape of an act in 1817, which empowered the local magistrates, after evidence on oath that a political meeting had been held at a public house, at once to declare the license forfeited. This was one of a series of exceedingly drastic measures intended to put down popular agitation. It served this purpose effectually for some years after it was passed ; and, although there was little or no need for it after reform was conceded in 1832, it lingered on the statute book until 1890.

Even before Parliament had begun to take cognizance of the liquor trade, custom and the requirements of the old municipal corporations had imposed some responsibilities on the keepers of alehouses and inns, such as the entertaining of travelers and the reception of dead bodies on which coroners' inquests were to be held. As time went on Parliament added to these

responsibilities, and also set up some disabilities in the case of publicans. In 1760 they were compelled to provide accommodation for soldiers; and in 1812 they were disqualified from holding any non-commissioned officer's place on the permanent staff of a militia corps. Later, after the licensing laws had been consolidated in 1828, the office of parish constable was added to the list of those which could not be held by a publican.

The consolidation act of 1828 still forms the basis of the English licensing system. It repealed most of the old laws, but the principle of magisterial control, established by the act of Edward VI, was embodied in the new measure; and although a departure from this principle was made from 1830 to 1869 in the case of beerhouses, as distinct from fully licensed inns, and an innovation in the direction of central control was threatened in 1871, the magisterial system exists to-day in much the condition in which it was fixed by the act of 1828. The important change made by this act consisted in the provision for a special meeting of the magistrates to be held within a stated period each year to pass upon applications for licenses. Other amendments gave applicants an appeal from the local bench to Quarter Sessions,¹ while previously the decision of the local magistrates had been final, and abolished the requirement of sureties for good behavior and of clerical certificates as to the sobriety of life and conversation, which had been important features in the act of 1753. It was stated in behalf of the government, when the measure of 1828 was pending in Parliament, that these last-mentioned requirements had been found vexatious to applicants, and of no security to public order.

X Under the system established by the act of 1828 the
magistrates hold a meeting yearly at which the only business
is that of licensing. Notices convening these meetings are
affixed to the doors of the churches and chapels within the
area over which the magistrates have jurisdiction. By the act

¹ In the county the magistrates who meet in the petty sessional divisions for the administration of summary justice and of the licensing laws also meet in Quarter Sessions for the hundred; but the appeal from the local magistrates to Quarter Sessions is to a higher court, and to one with a much larger jurisdiction.

of 1737 brewers, distillers, maltsters and retailers of excisable liquors were ruled off the bench when licensing applications were heard; and the act of 1828 extended this disqualification to owners of houses in respect of which applications for licenses were to be made, to the managers or agents of brewers, distillers and maltsters, and to magistrates who were, either by blood or marriage, fathers, sons or brothers to any engaged in these trades. At one of these annual meetings of the magistrates the applicant for a license presents his case. Usually nowadays he is represented by a lawyer, and in the case of a new application testimony as to the need of the proposed new license is submitted. The applicant is compelled to exhibit a notice on his premises announcing that he is applying for a license; and when the case comes on for hearing in open court, neighbors who are opposed to the establishment of a public house near them lay their opposition before the magistrates. The question of granting or withholding the license is determined by a vote of the magistrates. Each magistrate voting in the majority for the granting of the application signs the certificate. With this in his possession the applicant goes to the commissioners of excise, and having procured their license, which they have no option in granting after the certificate is presented, he is in a position to open his house for the particular business for which he has obtained magisterial permission. Every license is granted for a year only, and must be renewed at the annual meetings of the magistrates.

Although the act of 1828 was intended as a consolidation and definite settlement of the licensing system, the adjustment reached was destined to a shorter career than that effected by any of the numerous preceding acts. It had hardly got into working order before a serious inroad was made on the system of magisterial control, and a principle which had been at the foundation of the whole licensing system was set aside. An era of free trade in beer began, which with some modifications and restrictions lasted for forty years.

II. *The Era of Free Trade in Beer.*

The grounds on which the Wellington administration supported the radical change which was thus unexpectedly made in 1830, were partly fiscal and partly social. First, some readjustments were being made in the revenue system. The government were about to remit taxation to the amount of three millions sterling, and, in doing so, were anxious that the benefit should accrue to the working classes. Such a sum was annually received from the beer tax, and the government decided to give up this tax entirely. They were afraid, however, that as the licensing system then stood, the greater part of this remission would find its way into the pockets of the brewers. At that time the control of the brewing industry by great joint-stock companies did not extend, as it now does, throughout the whole country; but in London there were a number of firms possessed of enormous capital, which had tied to them most of the inns and beerhouses licensed under the act of 1828 in the metropolis. England was then divided into sixty districts for the collection of excise. In the London district there were nearly 5000 publicans, of whom only thirty-nine brewed their own beer. In the ten counties adjacent to London there were nearly 10,000 publicans, only 820 of whom brewed beer at home.¹ But in the more remote counties the connection between the breweries and the inns and alehouses was not nearly so close. Of 14,800 publicans in Wales and the seven adjoining counties, 12,500 brewed their own beer. At the present time the tied-house system, under which brewery companies purchase alehouses and place managers in them, or attach houses to breweries by loans and mortgages, is common all over England. It is safe to say that not more than twenty-five per cent of the inns and beerhouses are free from the brewers. In 1830 the tied-house system was confined to London and the home counties. In these places, however, the brewers' monopoly was undisputed, and it afforded the government some ground for the apprehension that if the beer tax were remitted, the greater part .

¹ These figures were laid before Parliament in 1828.

of the remission would go into the pockets of the brewing firms.

A further reason for the new policy, and one which was emphasized as much as the desirability of preventing the brewers from enriching themselves, was the dread that the poorer classes were becoming victims of the spirit-drinking habit. This fear had stamped itself on several acts passed since the time of George II, and in 1830 it was very prevalent, owing to the great consumption of gin by the laboring classes in London. There seems to have been at this time only one member of the House of Commons who was opposed to the drinking of all intoxicating liquors, and who took the stand towards the drink trade which Sir Wilfrid Lawson has taken since the sixties. This was Mr. Silk Buckingham. He seems to have been the pioneer of the temperance movement in Parliament ; but in 1830 he stood alone. No other member raised any objection to beer-drinking by the working classes ; that was regarded as the normal order of things. What the government desired to suppress was gin-drinking, and one of their principal reasons for remitting the beer tax was to bring about the substitution of wholesome beer for gin as the drink of the working classes.

As soon as the intentions of the government in regard to free trade in beer were announced, a great outcry was raised not only by the retailers but also by the magistrates, who, under the proposed law, were to be deprived of a control over alehouses which the magistracy had exercised since the time of Edward VI. Hundreds of petitions were presented to Parliament from keepers of inns and alehouses licensed under the act of 1828. Speeches in support of petitions were then in order in the House of Commons, and some of the spokesmen of the spirit trade declared that throwing open the sale of beer to all comers would in London alone entail a loss to the trade equal to two millions sterling. It was argued, also, that people had begun keeping inns and alehouses on the faith of the settlement made by the act of 1828, and that if they were disturbed by the sweeping change contemplated by the government

they were entitled to compensation. This was the first time that the plea of vested interests in the liquor trade was put forward in Parliament ; but frequently since, when reform of the licensing system has been proposed, the opposition has laid great stress on this plea.¹

Little heed was paid in 1830 to the cry of vested interests. Those who raised the cry were then bluntly told that it was absurd to talk of vested interests in a trade, the regulation of which might at any time be varied by Parliament for the public good. The fact was also recalled and emphasized that the Parliamentary regulation of the trade had been made, not for the protection of the trade, but solely for police purposes. It was admitted that the brewers had turned these police regulations to their profit ; but because they had done so, and had built up monopolies by means of them, they had no right to demand that Parliament should make the regulations perpetual.

The bill was the occasion of more discussion in Parliament and of more commotion in the country than any other measure—excepting Catholic Emancipation and Parliamentary Reform—dealt with by the unreformed Parliament in the last thirty years of its existence. Nearly five hundred petitions were lodged against the bill, whilst there were fewer than ten in its favor—a circumstance which shows that the working classes were not aware of the boon which the government had in store for them. The working classes, it is true, had then no Parliamentary repre-

¹ In 1888, when the Local Government Bill was introduced into the House of Commons, it embodied a scheme for taking the control of licensing out of the hands of the magistrates, and giving it to the county councils. In this measure, however, the government had anticipated the cry of vested interests. One of the clauses bringing about the transfer empowered the county councils to suppress public houses which no longer met a public need. A compensation scheme accompanied this proposed change, and the funds out of which compensation was to be paid were to be raised by a tax on the remaining public houses in the locality. The temperance party in the House of Commons, however, strenuously objected to the recognition of vested interests contained in the compensation clauses. They relied on the fact that all licenses are granted only for a year, and scouted the idea of compensation. As a result of this opposition the entire plan was abandoned, and the control of the retail liquor trade was left where it had been since the sixteenth century.

sentatives, and there was no cheap press; but on other questions they were, even at this time, accustomed to petition Parliament, and they were adepts in the use of public meetings and popular demonstrations.

At every stage the representatives of the trade and those of the magistrates opposed the bill. The county magistrates in particular regarded it as an expression of want of confidence in them; and complained that free trade in beer would deprive them, as conservators of the peace, of the opportunities they had so long enjoyed of keeping watch over poachers, smugglers and other rural bad characters. So long as the magistrates had it in their discretion to grant or to withhold alehouse licenses, and so long as the keepers of these places were compelled at least once a year to appear before them, the magistrates held that they had especial facilities for maintaining order among the frequenters of public houses, and for exercising a salutary check on the landlords.

Despite the outcry in the country and the opposition in Parliament, the government persevered with the bill, and used their majority to force its passage. When the opposition realized the intention of the government, they persistently endeavored to whittle down the bill in committee. As it was drafted, any person who could pay a small excise-license fee was to be at liberty to open a beerhouse. The opposition sought to restrict the holders of these licenses to selling beer not to be drunk on the premises; but the government resisted the amendment, and in doing so had the support of those Radicals who were then known as the "Economists." The opposition next sought to set up a rate-paying qualification. Lest every laborer's cottage should be turned into a beerhouse, a fifteen-pound rating qualification was proposed. The government voted this down, on the ground that it would be unequal in its operation in town and country. Up to this time there had been no Parliamentary enactment fixing the hours at which alehouses should be closed. The opposition to the beer bill proposed that the new houses should close at ten o'clock at night. But this proposition shared the fate of all the other

proposed amendments which aimed to limit the scope of the free-trade experiment.

In the House of Lords, several of these amendments were revived ; but with no success. The Duke of Wellington had charge of the bill, and he advanced as reasons in its favor that it would reduce the price of beer, and separate the sale of beer from the sale of spirits. One significant clause was inserted at the instance of the chief-commissioner of woods and forests — a state department which has the management of crown property. In previous crown leases there had been provisions prohibiting lessees from using crown property in the liquor trade. The clause inserted in the beer bill provided that the new houses should be on the same footing as the then existing alehouses so far as prohibitory clauses in leases were concerned. This was intended for the protection of crown property, of which at that time there was a large amount in the West End of London. In one other particular the new beerhouse keepers were placed on the same footing as publicans ; for it was provided that soldiers could be billeted on them under the provisions of the Mutiny Acts.

Within four years of the passing of the act 33,000 beerhouses came into existence. If the discussions in Parliament in 1833 and 1834, and the questions addressed to ministers, afford trustworthy indications, the new system was the cause of widespread demoralization, especially in the small towns and the rural districts. In 1833 the feeling against it was strong enough to secure the appointment of a Parliamentary committee of inquiry ; and by 1834 there was a great agitation for the repeal of the act. It was then asserted that in London and the counties in the neighborhood of London most of the new beerhouses were in the hands of the large brewers, that the beer usually sold was most unwholesome, and in short, that the act had signally failed, and had engendered enormous social abuses. In the country it was complained that it had caused beerhouses to be opened in the most remote places ; that these houses had become centers of disorder ; and that in connection with the act there were no provisions for

police surveillance. The county magistrates had never liked the act, and in 1834 the magisterial benches all over the country were petitioning for its repeal.

Great pressure was brought upon the Melbourne administration to repeal the act, and in the early days of the session of 1834 questions were put to ministers which seemed to indicate an expectation that the government would yield. The committee of 1833 had made some recommendations with a view to amending the act. The most important of these was that all houses for the sale of liquor should be under the same regulations. The government, however, so far as their own initiative was concerned, ignored both the committee and the agitation, and left the amendment of the act to private members. Sir Edward Knatchbull, a Tory member for one of the county divisions of Kent, brought forward a bill to this end. It was welcomed and supported by the government, but it was not made a government measure, and it was opposed at every stage by the Radicals who had upheld the Wellington government in 1830. Attwood, one of the Radical group, described the amending measure as a concession to old women's talk.

The important changes brought about by Sir Edward Knatchbull were three in number : one required each applicant for an excise license to produce a certificate of good character from six householders, signed also by the overseer of the poor ; a second fixed the hour of closing at ten o'clock at night ; and a third gave the police power of entry similar to that exercised in connection with public houses licensed under the act of 1828. A score of other amendments, all aimed at crippling the act of 1830, were offered when the bill was in Parliament. The three described were, however, the only ones of any importance adopted, and with these amendments the act remained unaltered until 1840.

In these intervening years the question was never at rest. It was raised each year, and in 1839 the House of Lords adopted a resolution calling for a return to the old system. In 1840, as in 1834, the government were pressed to deal with

the question ; but, as in 1834, and as has been the case with every government since, the second Melbourne administration showed great unwillingness to identify itself with reform of the licensing system. Once more a private member stepped into the breach. This time it was Mr. Pakington, a Tory member for one of the Worcestershire boroughs, who described his bill as one to check "the unfortunate and pernicious system which most notoriously and in the sight of all in every town and county was undermining the morals and sapping the virtue of the artisans and laborers." Again, as in 1834, it was declared that the act of 1830 had failed to meet any of the expectations of its promoters. The number of beerhouses had risen to 45,000 ; in some parts of the country one house in every five had become a beershop. The Pakington bill proposed a rating qualification for beerhouse licenses. As in 1834, the proposition was strenuously opposed by the Radicals ; but the government held aloof, and with some alterations in detail the bill was carried. Many of the restrictive amendments proposed in 1830 and 1834 were moved in debate, but the only changes actually effected by the bill were in the direction of improving the character of houses to which licenses were granted. Only the actual resident was to be capable of holding a license. In all towns of more than 10,000 inhabitants licenses were to be granted only in respect of houses which were of a ratable value of £15 or over. In places with a population between 2500 and 10,000 the ratable value was fixed at £11 ; and in smaller communities at £8.

This second amending act brought no settlement of the free-trade question. In the fifties the experiment was once more the subject of agitation. In 1850 a committee of the House of Lords reported that under the system the morals of the working people were being seriously impaired ; and in 1854 another committee of the House of Commons recommended the abolition of the distinction between beerhouses and public houses, and that both should be under the control of the magistrates. In 1857 the government promised to deal with the question ; but despite this promise, the recommenda-

tions of the Parliamentary committee and the activity of private members, no reform was effected until 1869.

In the meantime, the Liverpool magistrates, acting under the law of 1828, tried a system of free trade in fully licensed houses. For a period of four years they gave a public-house license to every applicant who could bring a certificate as to character, so that Liverpool had a system of absolute free trade in beer, wine and spirits. The net result of the two experiments was that, between 1860 and 1870, Liverpool stood unmistakably preëminent among the seaports of the country for drunkenness and crime. The double experiment was a failure; and when the question of free trade in beer was again raised in Parliament, Liverpool was among the foremost petitioners for reform. ✕

In 1869, as in 1834 and in 1840, reform was discussed at the instance of a private member. A bill was introduced by Sir H. Selwyn Ibbetson, which went much further than the acts of 1834 and 1840, and provided for the total abolition of the system under which people could establish beerhouses on mere certificates granted by the excise department. By 1869 the beerhouses had no Parliamentary friends. Hume, Warburton and the rest of the "Economists" had passed away, and the Radicals of the era of the second Reform Act had other views with regard to free trade in beer. The Gladstone government at once accepted Sir H. Ibbetson's bill, limiting its operation, however, to a period of two years, as it was their intention within that time to deal more comprehensively with the whole subject of licensing. Members on both sides of the House vied with one another in insisting on the need of making an end of the experiment of 1830, and the one member who opposed the bill found with difficulty another member to act with him as teller against it in the division lobby. The act came into operation in July, 1869; and once more, as had been the case from 1627 to 1830, there was a uniform system of magisterial control, so far as concerned the granting of licenses.

III. *The Existing System.*

The act of 1869 put an abrupt end to the system which had been tried for nearly forty years. The existing beerhouses were, however, permitted to continue. At the present time there are, roughly speaking, 32,000 of them, forming about one-third of the total number of licensed houses in England and Wales ; and in at least one important respect they hold a securer position before the law than the houses licensed under the act of 1828 and under the amending act of 1872. The holders of these beerhouse licenses have still to make annual applications to the magistrates for renewal ; but the magistrates have less power in dealing with them than with the fully licensed houses. In case of the latter, a license may be withheld by the magistrates when they are of opinion that there is no longer public need for the house. With the beerhouses, on the other hand, the magistrates have not this discretion ; so long as the holder of a beerhouse license conducts his place to the satisfaction of the police, and does not come into conflict with the licensing laws, the magistrates cannot withhold his license. This is a legal relic of the free-trade system. Other more obvious relics in all the large towns are the scores of houses — many of them no larger than laborers' cottages — in which is sold beer only.

In 1871 the government introduced the bill promised in 1869, when the Ibbetson Act was before Parliament. This measure, the first government licensing bill since 1830, failed to pass ; and it is now memorable only because it embodied a bold departure in licensing proposals, and because it marks the time when, under the enlarged Parliamentary electorate of 1867, the liquor trade became a force in English politics. At the basis of the bill was a conviction that the existing mode of granting licenses was not the fairest and the best. Personal considerations, it was urged, often weighed with the magistrates in granting or withholding licenses ; and while it was not proposed to take licensing entirely out of their hands, a system was to be established under which personal or

partisan considerations could have no weight. The magistrates were to determine the number of licensed houses for their districts, and having done this, they were to sell the certificates to the highest bidders. The certificates were to be good for ten years, and the holders were to be allowed to do business where they chose. It was obvious that under this plan only men of comparatively large capital could engage in the retail liquor trade ; and to make it easy for a capitalist to turn his certificates to account, it was provided that the certificate-holder himself need not live on the premises where liquors were sold. All that was necessary was that he should be represented there by a responsible manager. The trade was immediately in arms against the bill. The publicans carried their demonstrations of hostility into Palace Yard itself, and as there was no popular support for the measure it was quickly abandoned. The publicans afterwards claimed that it was their opposition which vanquished the bill, and, further, that for nine months in 1871 liquor-trade influences settled every Parliamentary by-election. The trade, no doubt, was exceedingly active at the by-elections, but a measure of this kind was a danger to every holder of property, and could never have got through Parliament.

After their failure in 1871 the government were in no hurry to venture on another bill. They were, however, pledged to deal with the licensing question, and late in the session of 1872 they introduced — this time in the House of Lords — their second bill, which eventually became law. It was a comprehensive measure, imposing new responsibilities upon the magistrates, the police and the publicans ; but it was marked by no bold departure from the existing system. One of the most important of its provisions was that which established a comparatively high annual value qualification for all houses licensed after the passing of the act. In London and in towns of 100,000 population, full licenses were to be granted only in respect of houses of an annual value of £50; in towns of 10,000, for houses worth £30; and in smaller places, for those worth £15. What are known as six-day licenses also first came to existence

under this act of 1872. These licenses are somewhat easier to obtain, and are subject to excise fees proportionally smaller than those for houses which are to be kept open on Sunday.

A provision of this act of 1872 which time has shown to be very important is that under which licenses may be removed from one part of a magisterial area to another. Magisterial sanction, however, must be given to each removal, and the householders in whose neighborhood a licensed house is thus to be established have the same right of objection as they have in a case where an entirely new license is sought. But there can be no doubt that this provision of the act has greatly benefited the brewers and the publicans. For twenty-five years past few new licenses have been granted by the magistrates. In many towns not a single new license has been issued in fifteen or twenty years ; but under this clause of the act of 1872 there has occasionally been a thinning-out of licensed houses in the older and more squalid parts of a town, and a removal of a license to a suburb. Usually magistrates are as chary of sanctioning these removals as they are of granting new licenses ; and it often happens that a large brewing concern, possessed of a number of tied-houses and anxious to get into new territory, will make a bargain with the magistrates to give up two, sometimes three, licenses attached to houses in neighborhoods where public houses are numerous, in order to obtain a license for a new house in a district which has grown up and developed since the free-trade experiment of 1830 came to an end, and since the policy of restriction became general with licensing magistrates all over England.

In regard to the hours of closing, some timidity was shown by the government in 1872. The question had been a disturbing one for many years. Up to 1864 the keepers of public houses had closed their places when it suited them. In that year an act was passed empowering the magistrates in London and the large towns, at their discretion, to close the houses between one and four o'clock in the morning. In the rural districts in 1872 there were no regulations. In the act of that year, the matter was still left, within certain limits, at the

discretion of the magistrates. Not until 1874 were the hours for closing fully licensed public houses rigidly fixed by Parliament. In that year the act of 1872 was amended at the instance of the Beaconsfield government, and by the amending measure schedules of hours were established, applicable respectively to London, to the larger towns, and to the smaller towns and rural districts. In London, under this law, public houses are closed from midnight on Saturday until one o'clock on Sunday afternoon ; from eleven o'clock Sunday night until five o'clock Monday morning ; and on all other days in the week from half-past twelve until five o'clock in the morning. In the large towns, the public houses close from eleven o'clock on Saturday night until half-past twelve o'clock on Sunday ; from ten o'clock on Sunday night until six o'clock Monday morning ; and on the nights of all other days from eleven o'clock until six in the morning. In the smaller communities the hours of closing are from ten at night to six in the morning, except that on Sundays the houses are closed until half-past twelve. They are also closed, all over England, during part of Sunday afternoon — from half-past two in the provinces, and from three o'clock in London, until six o'clock in the evening. Bona-fide travelers, who, according to the law, must have journeyed at least three miles, are the only persons in whose favor these Sunday-closing laws make any exceptions.

The scheduling of the hours of closing was the last general change in licensing regulations made by Parliament. That the system as thus rounded out is not destined to endure long in its integrity, seems an easy inference from current political movements. But it is a long way from free trade in beer to unqualified prohibition ; and the twenty-six years since the abolition of the former are not likely to have prepared the conservative English mind for even so much of the latter as is involved in the idea of the local veto.

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GEOGRAPHY AS A SOCIOLOGICAL STUDY.

I.

HUMAN history, says M. Taine, in his introduction to the *History of English Literature*, may be resolved into three factors — environment, race and epoch. That this analysis is substantially exhaustive appears from the unanimity with which these elements have been recognized by those who have considered the philosophy of history. Even the poet-philosopher, Herder, and the idealist, Hegel, do not hesitate to introduce their speculations by a description of the earth, its climates, and its material possibilities for civilization. Another arrangement of the elements of history is, however, made by M. Bertillon, who divides them into the “mesologic” influences of environment and the hereditary social forces.¹ On analysis this division does not differ widely from Mr. Bryce’s classification of the factors in American history as physical environment, race characteristics and “international concomitants.”² The importance assigned to these elements, however, varies widely with the man and the time. Hence it is doubtful if the followers of Carlyle or Mulford would agree with M. Leroy-Beaulieu that the causes of the present distribution of population in Russia are “twofold, historical and physical : the latter essential, permanent ; the former *accidental*, transitory and consequently bound to yield to the others in the end.”³ But, whatever the relative importance assigned, all writers recognize environment as a fundamental factor. Most of them, however, after formally making mention of it in their introductory remarks, have dismissed it from further consideration.

The last decade has witnessed a marked change in this respect. A widespread revival of interest in geographical

¹ Bull. Soc. d’Anthropologie, Paris, 2d ser., VII, p. 711.

² The American Commonwealth, vol. ii, p. 455.

³ The Empire of the Tsar, vol. i, p. 38.

studies, especially in their relation to human history and institutions, is now under way among English-speaking peoples. The apostles of the movement have been the late historian, Mr. Freeman, and the eminent author of *The American Commonwealth*; ¹ while several historical works of the last year evince the same interest in this phase of history. Mr. Payne, in his *History of the New World called America*, has shed a flood of new light upon an old theme.² Mr. Justin Winsor, in *The Mississippi Basin*, shows the geographical idea logically developed "with such firm insistence and with such happy results that he almost seems to have created a science for which as yet we have no name — which is capable of development even to the predictive stage."³ The movement has even invaded the sacred precincts of Biblical literature in Smith's *Geography of the Holy Land*, which is in itself a wonderfully suggestive commentary upon the course of Jewish history.⁴

The real significance of this tendency in historical writing lies not in its novelty, for it merely revives an old idea, but in the fact that the initiative comes from the historians, rather than from the geographers or the economists. Geography has

¹ An interesting sketch of the geographical work of Mr. Freeman will be found in the *Geographical Journal*, London, for June, 1892. The province of geography in its relation to history is discussed by Mr. Freeman in his *Methods of Historical Study*; and his uncompleted *History of Sicily* shows the extreme development of the ideas found in his *Historical Geography of Europe*. Despite this tendency, we find a late reviewer (*Nation*, July 18, 1895, p. 50) declaring that "after all his everlasting insistence on the great external facts of the history of the western world, [he] erred chiefly in going no further."

² *Vide* review by Professor Giddings in *POLITICAL SCIENCE QUARTERLY*, vol. viii, p. 733.

³ In dedicating the volume to the President of the Royal Geographical Society, he refers to the influence of physical geography in these words: "I would not say that there are not other compelling influences; but no other control is so steady." *Vide* review in *Nation*, July 25, 1895.

⁴ Since this article was written, a discussion of the influence of environment upon history has appeared in W. D. Babington's *Fallacies of Race Theories as applied to National Characteristics* (Longmans, Green & Co., 1895). Cf. Cliffe-Leslie in *Fortnightly Review*, XVI, p. 753: "The doctrine of race not only does not solve the problems which really arise respecting national diversities of character, career and condition, but prevents those problems from being even raised."

heretofore appeared in the guise of a suppliant for recognition at court. In fact, long before Comte refused to recognize it as a distinct science, it was the philosophers, Kant, Hegel, Voltaire, and not the historians, who acknowledged its importance.¹ The burden of proof in maintaining the value of geographic science for the historian has therefore rested in the past mainly upon the geographers ; and their zeal for the association of geography and history has been under suspicion as probably due merely to a selfish desire to take over from the latter the human element, which alone renders their own field widely attractive.² On the other hand, there is a disposition among certain scientists to resent the implied subordination of geography to history ; and to ascribe to such subordination in large measure the lack of interest in purely geographical studies.³ Whatever the cause may have been, it is certain that until recently there were no geographical textbooks in English which could not be classed either as topographical descriptions or else as miniature gazetteers. To be sure, the followers of Sir Charles Lyell had revolutionized the science of the earth ; but at the same time they had transformed a large part of geography into dynamic geology. What was left was for a long time untouched by the life-giving influences of the comparative method.

The geography that is attracting the historian today is that which is defined by Gonner as "the study of the environments of man." It is the geography of Guyot and of Ritter, enlightened by the newly developed sciences of anthropology, archaeology, sociology and even statistics. Call it "physiography" — defined by Professor Huxley as the science of man in relation

¹ A concise history of geography as a science is given in the opening chapters of Fr. Ratzel, *Anthropo-geographie*, as well as in *Proc. Roy. Geog. Soc.*, April, 1888, p. 205. Cf. *POLITICAL SCIENCE QUARTERLY*, IX, p. 321.

² A special report (*Geog. Jour.*, II, no. 1) on geography in the English Universities shows a slight demand for physical or descriptive as compared with that for historical geography. *Vide* letter of Mr. Bryce on the need for geographical instruction, in *Roy. Geog. Soc.*, *Supp. Papers I*, part iv, p. 592.

³ *Vide* Gen. Greeley's Presidential Address in *National Geog. Mag.*, VI, p. 201 ; and President Goldschmidt in *Proc. Brit. Assoc. Adv. Science*, Birmingham meeting ; answered in *Proc. Roy. Geog. Soc.*, March, 1887.

to the earth, as distinct from geography, the science of the earth in its relations to man; "anthropo-geography," with Professor Ratzel; or "histo-geography," with other writers: all these names point to the same end. It should not be confounded with the economic (*wirtschaftliche*) and statistical geography of Zehden, Deville or Chisholm; the commercial geography with which the secretary of the Royal Geographical Society crowns his pyramid of geographical studies;¹ or the administrative geography of General Greeley and the *École Libre des Sciences Politiques*. Nor is it the political geography of the late Mr. Freeman, or of Dr. Lucas. In fact geography, in any of the familiar senses, is after all only one element in this new science, which is simply an attempt to explain the growing conviction so well expressed by Professor Giddings, "that civilization is at bottom an economic fact." As such the new discipline is subordinate to history and yet superior to it. It stands to history as anatomy does to art — and no one would claim that art is degraded because it makes use of the exacter science. This conception will protect the students of the new geography from the charge of materialism, and will answer any objection that they are dragging history in the dust. In this sense, then, geography becomes a branch of economic as well as of historical inquiry, deriving from that fact twofold importance.

II.

The history of this quasi-geographical study of human environment may be roughly divided into three periods, conditioned by the rise and acceptance of the theory of evolution.

The first period lasted until the appearance of *The Origin of Species*. Its great representatives were Ritter, Guyot and Alexander von Humboldt, who performed the necessary work of preliminary classification and description. They did the work in geography which Agassiz, Richard Owen and Sir J. Wm. Dawson performed in their respective fields and times;

¹ *Scot. Geog. Jour.*, II, p. 455.

and their results were subject to the same limitation, namely, the lack of a general coördinating principle. They perceived the order in nature, but explained it all on the teleological basis. Africa and Asia were practically unknown ; no science of the human race had accumulated data ; and the speculations of these earlier thinkers, therefore, were necessarily of a very indefinite, albeit praiseworthy nature : from lack of proper material they were constrained merely to outline general principles.¹ The only other studies of a similar nature in this period were those of Quetelet and Bernard Cotta. These were to be sure definite and specific ; they contained to some degree the ideas of mass and averages ; but they were each limited to a small field.

The literature produced in the period just noticed was exclusively continental. The decade following 1859, which we may call the probational period for the doctrine of evolution, at first promised well for the extension of geographical studies into the English field. Ritter's works were received with great favor in translations ; and Guyot's Lowell Lectures awakened intense interest in America. No one thought of the lurking danger for the teleological idea. But suddenly "the gloomy and scandalous" theories of Thomas Buckle cast a deep shade over the field ; the alarm awakened by the lectures of Vogt and the claims of Darwin and Huxley became intensified ; and the sudden outburst all over Europe of interest in anthropological studies excited new fears. Moreover, the advocates of the doctrine of environment insisted upon taking the apparently harmless general principles of the founders of modern geography, and carrying them out into all details of social life. Long before the proper data existed, Buckle, Crawford, Pellarin

¹ This defect in earlier speculations is recognized even by their admirers. It is well put in the introduction to the first American translation of Ritter's *Allgemeine Vergleichende Geographie* : "It is to be regretted that the turn of the German mind is so little toward illustration of principles ; that it rolls out thought after thought, keeping them in an abstract shape, instead of casting them in that more concrete form which is characteristic of the results of the French, English and American minds." It is certain to-day that the immediate future of this science will depend upon the definiteness with which its conclusions are stated and illustrated.

and all the rest tried to copy the precision of the older exact sciences. As a result, the young science, trying too soon to walk alone, received a severe fall. And it must be confessed that the exaggerated claims of the economists, and the final gasps of the utilitarian philosophers, also contributed in some measure to bring about the disaster.

Uprooted in England, the new geographical ideas found on the continent a congenial soil, that had long been prepared by Bodin, Montesquieu and Quetelet. Cuvier had not hesitated to trace the close relation borne by philosophy and art to the underlying geological formations.¹ The French inclination to materialism offered a favorable opportunity for the propagation of the environment doctrine. It was kept alive in anthropology by Bertillon *père* and Perier ;² in literature by Taine ; and in the study of religions by Renan.³ Later it will be shown that where the choice lies between heredity and environment, the French almost always prefer the latter as the explanation for any phenomenon. In Germany the earlier work of Cotta and Kohl was continued by Peschel, Kirchhoff and Ad. Bastian, and in later days with especial brilliancy by Professor Fr. Ratzel.

At the present day there is a pronounced movement toward a favorable reception, even among English-speaking peoples, of the science which deals with environment in history. This is apparently due to the decay of antagonism to the doctrine of evolution. The new geography, regarded for some years with favor by scientists in general, is now beginning to exercise a perceptible influence on historical writing. In England this tendency has been stimulated by Wallace, Geikie, Strachey and Keltic. The Royal Geographical Society began its assertion of rights in history as early as 1877 ; and to-day the leading English Universities have courses in this new and

¹ Compare Froude's address on the philosophy of Mr. Buckle in his *Short Studies on Great Subjects*, 2d ed., 1867, p. 14.

² P. Cauwès, *Cours d'Économie Politique*, I, 217.

³ *Vide* Bull. Soc. d'An., Paris, 1870 to 1874 ; especially 2d ser., VII (1872), p. 711. Also Mém. Soc. d'An. for the same period. The École d'Anthropologie de Paris has had courses of lectures upon this subject for some years. *Vide* *Histoire des Langues Sémitiques*, Paris, 1863 ; and even earlier in *Asiatic Review*, Feb. and May, 1859.

reorganized geography.¹ In the United States Professor Shaler and Mason have contributed much to a like result ; although the Faculty of Political Science at Columbia College were the first to institute a regular and separate course of lectures upon this subject, distinct from those in descriptive and physical geography which belong to the departments of natural science. The tendency to broaden the scope of economics, and the new interest in sociology, have together made a distinct place for the new geography. Cliffe-Leslie and Roscher pointed the way ; and Aug. Meitzen, Ravenstein, Kirchhoff and others brought the use of statistics to its aid until to-day it stands ready to serve as an introduction as well as a corrective to the scientific study of society. That the historians are recognizing this fact is but a natural sequence of its mode of development.

III.

In every science which deals with man we may discover some trace of a division of opinion, similar to that which is responsible for the great controversy in which the biologists have recently been engaged. Almost everywhere appear two schools, of which the one attaches the greatest importance to race, transmitted characteristics or heredity, while the other regards this factor as subordinate to the influences of environment. In anthropology the two schools appear in various phases of the old debate between the monogenists and the polygenists as to the mutability or permanence of characteristics. To take a modern example, nearly everywhere in Europe we are confronted with the fact of a distinct anthropological differentiation, especially marked in differences of stature, of the

¹ For a fine outline of the present standing of geography in English Universities, *vide Educational Review*, VI, 417. See also the Roy. Geog. Soc., *Supp. Papers*, I, part 4, London, 1886, and the Proceedings of the same society since that date, especially for 1888 ; and *Proc. Brit. Assoc. Adv. Science*, 1887, p. 15. The files of the *Scottish Geographical Magazine* also contain notes from time to time on the progress of the science in the Universities.

² The International Geographical Congress at Chicago devoted no less than five papers to the relation of geography to history.

populations of the mountainous regions from those of the open plains. In the early days, when race was an adequate explanation for everything, the problem was simple. But since the doctrine of evolution has shaken faith in what Cliffe-Leslie has called "the vulgar theory of race," a second competent explanation is to be found in environment. The choice between these two possible causes of the phenomenon, or the proportion in which the two shall be combined, varies in absence of more definite proof with the personal bias of each observer.

In Russia there is from the southwest toward the northeast a general and progressive decrease in the stature of the population, which is explained by Anoutchine mainly as the result of heredity.¹ Race fixes the average stature, while environment merely affects the rate of growth. In other words, the short stature of the pure Slav toward the Asiatic frontier has been raised in the southwest by intermixture with a taller race. Tschouriloff applies the same reasoning to the people of Normandy.² On the other hand, Professor Ranke, following von Baer, accounts for similar differences of stature in Bavaria, with no greater contrast of physical surroundings, as the result of conditions of life, particularly of soil and elevation—a view which is maintained also by d'Orbigny.³ Similarly, Pagliani and Sormani ascribe the relatively short stature of the Italians along the Adriatic coast to intermixture with a stunted race from the Orient. With no more conclusive arguments Cortese explains the relative shortness of the people of Sardinia by reference to the barrenness of the soil and the general poverty⁴—a theory which follows the views of Lombroso with regard to the Italians in general.⁵ In France, the school relying upon environment includes the

¹ *L'Anthropologie*, I, p. 62.

² *Jour. Soc. de Stat.*, Paris, XVI, p. 5. Precisely the same reasoning is used to explain differences of stature in Thuringia, where any relation to the richness of the soil is denied. *Archiv f. Anth.*, Aug., 1888.

³ *Beiträge zur Anth. u. Urgesch. Bayerns*, IV, p. 17. This view recurs constantly in all his works; *vide* *Der Mensch*, II. For Mecklenburg the contrary explanation is offered by other writers, who appeal to race. *Archiv f. Anth.*, XIX, fasc. 1.

⁴ *Rev. d'Anth.*, 2d ser., V, p. 710; and *Annales de Demog.*, V, p. 184, *et seq.*

⁵ *Annales de Demog.*, VII, p. 59.

names of Boudin, Sanson, Villermé and Quatrefages de Breau,¹ with Quetelet in Belgium. Its opponents, relying upon race as the main factor, include Broca² and Topinard.³ At the present time a strong reaction in favor of environment is headed by Dr. Collignon.⁴ In explaining the development of the French Swiss, J. Carret⁵ appeals to environment, in opposition to Dunant,⁶ who relies upon race. Dr. Brinton concludes that "differences of stature are tribal, but not racial."⁷

To a lesser degree we may trace a similar division of opinion in respect of anthropological characteristics other than stature. Ranke would account for craniometric differences between mountain and plain in terms of environment,⁸ where Livi in Italy, under similar circumstances, would deny that anything but race intermixture could cause them.⁹ Virchow would in all cases, whether as regards cephalic index or pathologic predisposition, rely upon the individual and inherent characteristics rather than upon the external surroundings.¹⁰ The tendency of certain portions of the French population to contract certain disorders may be explained likewise on either of these bases.¹¹ This diversity of views may be said to reach a

¹ Bull. Soc. d'An., 1893, pp. 139, 209, 254; Topinard, *Éléments*, p. 387; *L'Espèce Humaine*, chap. xxii.

² *Rev. d'Anth.*, 2d ser., VI, p. 523.

³ Topinard, *Éléments*, p. 457.

⁴ *Mém. Soc. d'An.*, 3d ser., fasc. iii, 1894, p. 31.

⁵ *Étude sur les Savoyards*. Criticised in Topinard, *Éléments*, p. 450.

⁶ Topinard, *Éléments*, p. 457. The question is left undecided for the decrease in stature in Tyrol and Voralberg toward the southwest. *Mitt. Anth. Ges.*, Wien, XXI, fasc. 2 and 3. Similarly for Baden in *Archiv f. Anth.*, Braunschweig, IX, p. 257.

⁷ *Races and Peoples*, p. 35.

⁸ *Mitt. Anth. Ges.*, Wien, XVII, p. 132; *Beiträge*, IV; *Der Mensch*, II, p. 207 and 222. Kollmann insists upon the immutability of racial types in all cases. *Verh. der Berl. Anthropol. Ges.*, 1889, p. 332.

⁹ *Archivio per l'Antrop.*, XVI, p. 223, *et seq.*

¹⁰ *Vide* remarks by Dr. Luschan in *Proc. Assoc. fran. pour l'Avan. des Sciences*, 1878, p. 825; and *Correspondenzblatt der Deut. Ges. f. Anth.*, XVIII, p. 18.

¹¹ Durand de Gros (*Bull. Soc. d'An.*, 1868, p. 138, *et seq.*), Dr. Bordier (*La Géographie Médicale*, p. 90) and Dr. Chevrin (*Comp. rend. de l'Assoc. fran. pour l'Avan. des Sciences*, 1878, p. 803) ascribe the bad teeth of certain portions of the French population to soil and water. Lagneau (*Bull. Soc. d'An.*, 1867, p. 389), Dr. Chibret (*L'Anthropologie*, III, p. 353) and Levasseur (*Bull. Inst. Int. de Stat.*, III, fasc. 3, p. 42), in similar cases, appeal to race or heredity.

climax in the debate as to the origin of the Aryans. Penka and Reinach regard them as a product of outward circumstances, while Schaafhausen explains the physical differentiation of the Aryan from the Mongol type by the influences of civilization, which are a product of inwardness, or of training and heredity.¹ It is probable that the true explanation is a combination of the two views ; but the fact that they may, in the end, reduce to the same, does not in the least lessen the sharpness of the controversy.

The predisposition of observers to take these opposing views on the same, or similar evidence, may be shown by a few more illustrations chosen at random. It appears at once in all discussions over the various forms of village community and of architectural types in Europe. Thus, Aug. Meitzen divides Germany into several sections, dominated respectively by what he terms the German, the Celtic, the Roman, and the Slavic type of village. In comparing these, the haphazard grouping of homes in the Germanic village is sharply contrasted with the regular arrangement in the Slavic community, with its houses about a central court or along a straight street ; and the regular division of the land into hides (*Hufenverfassung*) owned in severalty, which characterizes the German type, is as sharply differentiated from the holding of lands in common among the Slavs. Distinct from each in many respects, especially in its peculiar architectural customs, is the Celtic type, which rules in South Germany and Bohemia.² Approaching the subject in this way, the statistician may help in solving the vexed question of the origin of the rural types of the population, provided these traits are the constant result of race and of heredity. But if these differences are merely the result of local circumstances, all their ethnological significance vanishes, and they become of importance merely for purposes of reform or administration. In a similar investigation in France,

¹ *Vide L'Anthropologie*, III, p. 747 ; *Ausland*, 1891, p. 7 ; *L'Origine des Aryens*, Paris, 1892 ; especially the discussion in *Verh. Anth. Ges.*, Wien, Nov. 11, 1884.

² *Beobachtungen über Besiedelung, Hausbau und landwirthschaftliche Kultur*, in Kirchhoff's *Anleitung zu deutschen Landes- und Volksforschungen*, p. 481 *et seq.* ; or *Zeits. für Eth., Anth., u. Urgesch.* for 1872, Sitz-Verh. for April 13.

the predilection for environment has apparently led to this conclusion.¹ So, in Germany, may not the utter lack of variety in the quality of plots for cultivation in the open plains of the Slavic people have led to habits of communal ownership, which are perpetuated in a new land through the selection for habitation of localities where such customs may persist unchanged? May not even the laws of inheritance be affected by the environment in the sandy sterile regions, to the end that primogeniture, and not equal division of the land among heirs, may be the only form of inheritance which will survive? Is not emigration of all the children but one a physical necessity? These are some of the questions which the geologist, Cotta, would answer in the affirmative; and Baring-Gould acquiesces in his opinion.² The truth, probably, is a mean between these extremes; but in the absence of some recognized criterion our judgment will depend to a great extent upon personal predilections. Precisely the same conflict of opinion may prevent a final acceptance of some of the theories of Mr. Gomme with regard to the early inhabitants of Great Britain; for we may emphasize the ethnic element, as he is inclined to do, or we may prefer to interpret the form of the village more nearly in terms of environment, as does the geologist Tapley.³

A fundamental distinction must be made between social and physical environment. This is especially important because it is closely related to a further distinction between the direct and the indirect effects of the *milieu*. Thus, that in general,

¹ Enquête sur les Conditions de l'Habitation en France. Les Maisons Types. Min. de l'In. Pub., des Beaux Arts et des Cultes, Paris, 1894. Introduction by A. de Foville. *Vide* pp. ix-xviii, especially.

² Deutschlands Boden, sein Geologischer Bau und dessen Einwirkung auf das Leben des Menschen, Leipzig, 1858. In part ii. p. 63, *et seq.*, the geological factor in the distribution of the village community in Germany is fully discussed. *Vide* also, Karl Goritz, Ueber die im Königreich Württemberg üblichen Feldsysteme und Fruchtfolgen, 1848. Baring-Gould, in History of Germany, p. 74, adopts this view.

³ The Village Community in Great Britain, p. 133, *et seq.*, and *Jour. Anth. Inst.*, III, p. 32, *et seq.*, especially p. 45. All of the references on this subject are accompanied by diagrams, maps or illustrations. The peculiarities of land tenure in the South Midland and other counties may likewise be the product of a double set of causes. Examples might be indefinitely multiplied.

under a system of peasant proprietorship, the size of agricultural holdings should be larger on an infertile soil than on rich bottom lands, is a direct result of environment; for the size of holdings tends to vary according to their capacity for giving independent support to a household.¹ But the influence of environment is no less important, even though less direct, when the infertile region produces social isolation, and thereby generates a conservative temperament, which resists all attempts at a subdivision of the patrimony.² The result — a holding above the average size — is in each case the same, and the ultimate cause is physical environment.

This distinction between social and physical environment may be illustrated by a concrete example in the domain of anthropology. The fact has been noted quite independently in various countries of Europe, that the urban populations differ craniometrically in a marked degree from the people of the surrounding agricultural regions. Calori discovered that the people of Modena have decidedly narrower heads than the suburban population — the cephalic indices being respectively 80.6 and 83.4.³ Durand de Gros noted the same difference among the French in Aveyron;⁴ and Ammon affirms it to be true in the Grand Duchy of Baden.⁵ In Bavaria, Ranke observes a difference between city and country in the average size of the heads,⁶ which varies, moreover, in opposition to other physical characteristics. This cranial differentiation may be variously explained. In the first place, it may mean that the greater mental strain in city life has

¹ The further discussion of this question is reserved for more detailed treatment.

² This is the cause assigned by Cliffe-Leslie for certain peculiarities in land-tenure in parts of France. *Fortnightly Review*, XVI, p. 740.

³ *Archivio per l'Antrop.*, XVI, p. 274. Livi and Lombroso confirm this fact, which Riccardi (*Cefalometria dei Modenesi moderni*, Modena, 1883) has also pointed out.

⁴ *Bull. Soc. d'An.*, 1868, p. 228.

⁵ *L'Anthropologie*, III, p. 317; and *ibid.*, III, p. 722.

⁶ *Correspondenzblatt der deut. Ges. für Anth., Eth. u. Urgeschichte*, III, p. 211; and in *Stadt- und Land-Bevölkerung verglichen in Beziehung auf die Grösse ihres Gehirnraumes*, Stuttgart, 1882. Urban selection in England is discussed in Beddoe, *Races of Britain*, p. 225.

directly caused a morphological change toward dolichocephaly.¹ This seems improbable, since Virchow, following all the evidence offered by the study of savage man, affirms that the tendency of civilization is toward the broader-headed type.² Or it may be that the cranium has merely participated in the changes which improved economic conditions have produced in all the physical measurements.³ In all these theories heredity is recognized as effective, wherever the influence of social environment is direct. Another class of explanations rely upon natural selection as the efficient cause. In the same race there may spontaneously arise two types, of which the keen competition of a hot city life selects the better fitted for survival. Or, lastly, there may be two distinct race types, with concomitant physical and mental characteristics, to one of which the city offers superior inducements for immigration.⁴ In such a theory all direct effect of civilization upon the cranial conformation disappears:⁵ the less progressive type is merely stranded in the rural districts instead of being exterminated in the city itself. This last explanation has been finally accepted in France.⁶ That it is in part true for Germany follows from the fact that differences in the color of eyes and hair accompany the differences of cephalic indices,⁷

¹ Or it may, as Dr. Beddow has pointed out, be due to differences in professional activity. Topinard, *Éléments*, p. 449.

² See *L'Anthropologie*, IV, p. 42, for a review of Bogdanov's conclusions for Russia, agreeing with Virchow. These are criticised in Topinard, *Éléments*, p. 396, although the general tendency of civilized man toward brachycephaly is acknowledged. *Ibid.*, p. 406. Schaafhausen alone differs. The measurements of Stephanos show that the modern Greeks are broader-headed than those of classic antiquity.

³ See remarks in Beddow, *Races of Britain*, p. 78. Also Ranke, *Beiträge*, IV, p. 17; *Jour. Anth. Inst.*, XI, p. 412; *ibid.*, VI, p. 174; *Archivio per l'Antrop.*, XV, p. 98; Bull. Soc. d'An., 1888, p. 156. The relation of stature to brain capacity is well treated in Ranke, *Der Mensch*, II, p. 225.

⁴ It may be that there is compulsion from behind — that migration from the country is due to the desire to preserve the rural patrimony intact.

⁵ Schmidt has shown that the cranial capacity of the Parisian is less than that of the Celt. Ranke, *Der Mensch*, III, p. 228.

⁶ A peculiarly interesting case is offered by the city of Limoges. *Mém. Soc. d'An.*, Paris, 3d ser., I, fasc. 3, p. 19.

⁷ Thus the population of Bavarian towns has been shown to contain a high percentage of the brunette type. G. Mayr, *Die Bayerische Jugend*, Separat-

until it would indeed appear that "the industrial and commercial struggle is a conflict of races."¹ This is an illustration of what we may term the indirect effect of social environment.

The importance of emphasizing the distinction between the direct and the indirect influence of environment lies in the fact that with advance in culture, it is the latter, subtler aspect of the *milieu* which becomes progressively of greater importance. All thinkers would agree with Mr. Spencer, "that feeble unorganized societies are at the mercy of their surroundings"; or with Mr. Kidd, that "the progress of savage man, such as it is, is born strictly of the conditions in which he lives." Nature sets the life lines for the savage in climate; she determines his movements, stimulates or restrains his advance in culture by providing or withholding the materials necessary for such advance. The science of primitive ethnology is a constant illustration of this fact even in the smallest details.² It is only when we come to study peoples in more advanced stages of culture that we find environment marking the line of cleavage between two opposing views. One set of thinkers affirm that at a certain point, natural selection seizes upon mind as the dominant and vital factor in progress. Society passes from the "natural" to the "artificial" stage. Based upon this thesis, the study of environment becomes more and more retrospective—even, so to speak, archaeological. The Alps, which once divided the culture of bronze from the age of iron, became powerless to prevent the passage of Hannibal or Napoleon; and to-day the Triple Alliance sits restfully astride them, while Germany is effectively divided from her neighbors France and Russia, although geographically akin to both.

The opponents of this optimistic view take the ground that

Abdruck des Bayr. stat. Bureaus, 1875. The intimate relation between pigmentation and vitality in the brunette type is discussed in *Rev. d'Anth.*, 3d ser., II, p. 265. If, indeed, "pigment is an index of force," the point is proved. Cf. Beddoe, *Races in Britain*, p. 224.

¹ *L'Anthropologie*, III, p. 122. This subject is discussed on a slender basis of statistical facts in Ammon's *Natürliche Auslese bei Menschen*.

² This is ingeniously worked out by Professor Shaler in *Nature and Man in North America*.

civilization is merely a result of adaptation to environment physical as well as political. Once more to quote Mr. Bryce

The very multiplication of the means at his [man's] disposal, profiting by what nature supplies, brings him into ever closer and more complex relations with her. The variety of her resources, differing in different regions, prescribes the kind of industry for which each spot is fitted; and the competition of nations, growing always keener, forces each to maintain itself in the struggle by using to the utmost every facility for the production or for the transportation of products.¹

It would be easy to multiply examples of the effect of progress in thus compelling specialization — the utilization of each advantage to the last degree, — thus illustrating the force of environment even in the highest civilization. When the vine was introduced into California, the settlers tried to cultivate it in the north and in the south, along the rivers and on the hill sides, near the coast and in the interior. The grape rapidly took root and grew, but its very prosperity in some places threatened its culture in others.² Some valleys soon proved too hot to produce wine which would sell in competition with the best; some soils were too heavy, others too moist. Certain regions produced sherries, while others served better for port wines. To insure success, the conditions had to be most diligently investigated each year; and it was precisely because all were successful that specialization had to follow.

A similar example is the progressive differentiation of agriculture taking place all over the United States to-day. Once it was possible to point to the corn, cotton, wheat and rye belts, and to show a massing of each crop, regardless of local circumstances. But in virtue of the severe international competition these great aggregations of similar crops are breaking up, and local specialization is the rule.³ It is precise

¹ A new chapter on this subject added to the third edition of the *American Commonwealth*, II, p. 450. The same view is well expressed by General Strachan in *Proc. Roy. Geog. Soc.*, XXI, p. 200, *et seq.*; and by Professor Geikie in *ibid.*, 18, p. 442, and in *Macmillan's Magazine* for March, 1882.

² *Fortnightly Review*, vol. liii, p. 401, *et seq.*

³ *Publications Amer. Stat. Assoc.*, Dec., 1893, p. 492, *et seq.*

because nearly all Japan is favored as a silk-producing country that her best silk culture is forced to localize itself.¹ Less than a quarter of a century ago a difference of an inch in the length of the cotton staple was of slight importance ; but in 1894, with improved manufactures, Egypt found a ready market in the United States — the home of cotton — for 35,000,000 pounds of her product. The same principle holds true of mechanical industry. When the manufacture of cotton was introduced into the United States it was indiscriminately prosecuted wherever there was water-power and labor. At last it was perceived that climatic influences were of great importance in the finer fabrics, and to-day there are indications that the work of this grade is tending to localize itself along the south shore of New England.² Here, again, it is not any lack of ability to manufacture in the less favored spots, but the conspicuous advantages in the new localities, that finally produce the new results. Each advance in skill makes the influence of local peculiarities more keenly felt. In short, we have here merely another illustration of the economic advantages of division of labor.

IV.

The scope and purpose of this new phase of geography — the study of physical environment — are certain and well-defined. It is a branch of economics, with a direct bearing upon history and sociology. As Mr. Bryce observes :

It is the point of contact between the sciences of nature taken all together and the branches of inquiry which deal with man and his institutions. Geography gathers up, so to speak, the results which the geologist, the botanist, the zoölogist³ and the meteorologist have

¹ *Jour. Roy. Geog. Soc.*, vol. xl, p. 340.

² *Vide* article by the author in *New York Evening Post*, Mar. 30, 1895.

³ For a fine illustration in this field, see Payne's recent *History of America*, especially his treatment of the zoölogical poverty of the New World in its bearing upon the Aztec civilization. Compare the use made by Canon Taylor of the distribution of the beech tree in Europe in locating the center of dispersion of the Aryans. *Vide* *Proc. Brit. Assoc. Adv. Science*, 1889, p. 782. The paper is published in full in *Knowledge*, Nov., 1889.

obtained, and presents them to the student of history, of economics of politics, — we might even add of law, of philology, and of architecture, — as an important part of the data from which he must start, and of the materials to which he will have to refer at many points in the progress of his researches.

In this sense the science may, perhaps, be termed merely a mode of sociological investigation — the geographical as distinguished from the graphical method ; and in this case there is no limit to its application. This is the sense in which Dr. Schiffner has defined it when he says: "Every relation of life which exists upon the earth, and which may be plotted upon a map, belongs in one sense to geography."¹ It may illustrate the spread of a great economic movement.² It may be applied, as by Canon Taylor, to the study of linguistic ethnology,³ and it has a great future in the study of dialects. It may show the distribution of intellectual characteristics.⁴ And most suggestive work may be done in showing the geographical distribution of membership in learned societies, colleges and other institutions, or of political affiliations. Its applications in anthropology, and in statistics generally, are too well known to need mention.

With all its possibilities, however, this science must clearly recognize its own limitations, arising from the power of purely historical elements, of personality, of religious enthusiasm, and of patriotism.

The fact probably is that historical phenomena should be ranked in a gradually varying series, at only one extremity of which the reign of law can be absolute and supreme. In proportion as merely physical facts enter into the matter of the case, do historical phenomena tend to place themselves in this law-dominated extreme. The science

¹ *Mitt. Geog. Ges.*, Wien, Neue Folge, VII, 1874, p. 103. A discussion by a lawyer upon the application of geography to the study of law is a fair illustration of this phase of our study.

² In Ashley, *Economic History*, II, opposite p. 304, is a map illustrating the spread of enclosures in England.

³ In *Words and Places* are several such maps. In Germany, especially, dialectic maps have long been in use.

⁴ "Geographical Distribution of Intellect," in *Jour. Roy. Stat. Soc.*, vol. xxxiv, p. 357, or "Education in Hungary," *Petermann's Geog. Mitt.*, 1884, plate ix.

of geography, among others, embraces a wide circle of physical facts bearing directly upon history. The migration of peoples in all times, wars in all their kinds and in all their details, the growth and break-up of empires, the production and maintenance of the balance of power among groups of nations, are instances of historical facts largely affected by geography; and to the same class obviously belong, in a yet higher degree, the incidents of maritime discovery. The case of America amply bears out the inference. Were all historical facts of the same kind, the history of the discovery might rank among the leading illustrations of the theory that history may be predicted from its preceding conditions.¹

Prediction, even in this sphere, is, nevertheless, always dangerous. By all the laws of geographical probability, English influence on France ought to have been greatest in Normandy; while in reality Aquitaine was the center of England's continental activity. That Yorkshire and not Kent should to-day exhibit the strongest infusion of Norman blood in England, is also a geographical anomaly. Again, take the following case in connection with the distribution of population. In Brittany a primitive, non-absorbent rock formation affords numerous natural reservoirs to hold the abundant rains, and the population is scattered broadcast in little hamlets. In the Department of the Marne, on the other hand, where a calcareous soil quickly absorbs the scanty rainfall, the people are bunched about the springs and rivers. Accordingly, the two districts differ widely in their percentages of urban population and in all the social characteristics dependent thereon.² It would seem as if the relation of geological and social conditions here discovered might be formulated into a general law, through which the course of settlement in a new country might be predicted. But the United States promptly sets such a law at defiance. For here it is on the primitive rock formations, in the area of plentiful rains, that the New England village is at home. It is in the drier areas of the West, and even on their clayey soils, that population is most widely scattered. Thus, the

¹ Payne, *op. cit.*, p. 18.

² For illustrations in detail see Levasseur, *Bulletin de l'Inst. Internat. de Statistique*, III, liv. 3 (1888), p. 73.

force of custom and tradition proves itself fully able to withstand for a time the limitations of physical conditions.

Yet, even if it does not reach the grade of a predictive science, the study of the *milieu* cannot be neglected. One of its aims will always be "to discover whether the historical development of a people is in harmony with its environment, and if not, whether it is a plus or minus factor in progress."¹ If it be modest in this wise, geography will soon establish its position as an essential branch of political and social study.

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The Province of economic geography is well discussed in *Zeitschrift der Gesellschaft für Erdkunde zu Berlin*, vol. xvii, p. 354. An interesting article will also be found in *La Science Sociale*, vol. xvii, p. 244. The standard works of Chisholm, Gonner, Deville, Yeats and Zehden are also important for illustration of principles.

THE GERMAN EMPEROR AND THE FEDERAL COUNCIL.

THE object of this paper is to account historically for the manner in which monarchical authority is organized in the German empire, or in other words, to inquire what organs or organs occupy in the empire a position similar to that which in Prussia belongs to the monarch. For this must have been the way in which the framers of the constitution themselves approached the subject. Certain functions and powers they regarded as monarchical, and the question for them was: To what organ shall these powers be entrusted? Their ideas as to the nature and extent of monarchical authority they of course derived from the political organization of the German states in whose service they had been trained. According to German public law the prince is far from being merely the head of the executive department. He is rather the symbol of the unity of the state, and the center and source of all authority. All the acts of the state are regarded as his acts, although some of them have come to require the consent of a legislative assembly. While in other countries legislative authority has passed from the crown to the parliament, in Germany the monarch is still the legislator, at least to the extent that he refuses his sanction to enactments of which he disapproves. What in England has come to be but a form of speech, is still in Germany a reality.

That the state which they were about to organize must have a monarchical head, and that, too, in the sense here indicated, must have seemed to the founders of German unity a self-evident proposition. But how to organize monarchical authority was a question of extreme difficulty. The simplest solution would no doubt have been to place the King of Prussia at the head of the new federal state. How the other princes would have resented such a proposition may be inferred from the events of 1849. Nothing could be more galling to their pride

than the idea of subjection to one of their own number. But in a monarchical state one must be either subject or monarch. Hence, the only alternative was to entrust monarchical authority to the associated governments, and so to indemnify the princes for the diminution of their authority at home by giving them a share in the authority of the confederation. This solution had the advantage of historical continuity. The associated governments in the old Frankfort Diet (*Bundestag*) under the presidency of Austria, suggested the associated governments in the new Federal Council (*Bundesrath*) under the presidency of Prussia. The retention of ancient forms facilitated the transition from the old order to the new. To this transformed Diet, made up, as formerly, of the envoys of the German states, the most weighty monarchical powers were attributed. Under the constitution, as finally established, the *Bundesrath* enacts laws with the consent of the *Reichstag*, just as the King of Prussia enacts laws with the consent of the Prussian *Landtag*. It is a sort of supreme administrative board, having authority, as a rule, to issue administrative ordinances, and being empowered to remedy defects or omissions that occur in the course of administration. It has, moreover, the right, with the consent of the Emperor, to dissolve the *Reichstag*, and also the authority to decree federal execution against a recalcitrant state.

Up to this point, but no further, the framers of the constitution went on the way toward making the Federal Council the monarch of the empire. While bestowing upon it the powers just mentioned, they withheld from it those which bring the state into relation with foreign states and with its own subjects, and which involve the action of administrative departments. Had they carried out logically the idea with which they started, the Federal Council would stand at the head of the federal administration, and would carry this on by means of its committees, which do, indeed, bear a certain resemblance to ministerial departments. But such a form of organization was not likely to commend itself to statesmen with whom it was an axiom that administration, to be strong and

harmonious, must be under a single chief. Centralized administration was to them the necessary principle, and the single chief in the case before them could only be the King of Prussia.

But centralized administration under the King of Prussia does not necessarily mean the King of Prussia standing as a federal organ at the head of a federal administrative system. The governments, in the constitution which they submitted to the *Reichstag*, seem to have intended to entrust to Prussia the management of certain common interests, such as foreign affairs and the postal service, subject, however, to federal legislation and control. Not federal, but Prussian administration was what they had in mind.¹ This relation would have been similar to that contemplated by Bismarck when, after the Danish war, he offered to recognize the Prince of Augustenberg as Duke of Schleswig-Holstein on condition that certain branches of the ducal administration should be handed over to Prussia. In the new federal constitution, as outlined by him, Bismarck's idea seems to have been to bring about unity by means of federal legislation rather than federal administration. It was by means of agreement between the states, to be carried into effect by the states themselves, that some degree of unity had already been brought about. For treaty stipulation, which formed the bond of union in the Customs Union, it was now proposed to substitute federal legislation, and at the same time to apply to other subjects the same method of bringing about unity. Even according to the constitution as finally adopted many subjects that belong to the legislative competence of the empire are administered by the states. As bearing directly upon the subject under consideration, the fact may be mentioned that most of the German states have made over to the King of Prussia the military administration, which, under the constitution, belongs to them, thereby establishing a relation of the kind contemplated by the governments; for this admini-

¹ Bornak, Die verfassungsrechtliche Stellung des deutschen Kaiserthums, in *Archiv für öffentliches Recht*, VIII, 431. Haenel, Studien zum deutschen Staatsrecht, II, i, 12.

istration is carried on by him as King of Prussia, and not as Emperor.

The phraseology employed is, to say the least, not inconsistent with the view that the constitution, as submitted by the governments, contemplated not federal but Prussian administration, and consequently the partial incorporation of the other states in Prussia. By the presidency (*Präsidium*), to which the powers in question are entrusted, can only be meant the King of Prussia as president of the Federal Council. So far is the designation from denoting an office to be held by the King of Prussia outside of the Federal Council, that it describes his position as a member of that body. To bestow powers, then, upon the presidency, is to bestow them upon the King of Prussia. It does not, of course, follow that the terms describe the capacity in which the powers are to be held and wielded ; but that certainly is a natural interpretation.

That this is the interpretation which the governments placed upon their own draft, is made clear by the discussions in the *Reichstag*. Attention was called to this subject by certain Liberal members of that body, who pointed out that a serious defect of the proposed constitution was its failure to make provision for ministerial responsibility, and who brought forward amendments providing for the responsibility of the chancellor. The rejoinders made by Bismarck to their arguments furnish invaluable aid in divining the purpose of the governments. The responsibility of the administration was, so Bismarck contended, provided for in the draft. But when he proceeded to show wherein this responsibility consisted, it became clear how widely his views differed from those which had found expression in the proposed amendments. The chancellor was to be responsible to the Prussian government, whose envoy he was, and under whose directions he acted.¹ But responsibility under the laws and constitution of Prussia necessarily implies Prussian administration ; for the responsibility of federal officials could evidently not be measured by Prussian law. That Bismarck should have met the demand for federal responsibility by point-

¹ Stenographische Berichte, 393 and 397.

ing to the dependence of the chancellor on the Prussian ministry, cannot seem strange when we remember that in the constitution as adopted the chancellor, in his capacity Prussian envoy to the Federal Council, is responsible to the Prussian government; and when we consider the difficulty in the way of making the chancellor responsible at the same time, though in different capacities, to two different authorities. Bismarck's reply goes to the heart of the question. How could the chancellor, in deference to the wish of a majority of the *Reichstag*, advocate a measure before that body, and at the same time, acting under instructions from the Prussian government, cast Prussia's vote against the same measure in the Federal Council? This incongruity has not yet been felt because the responsibility of the chancellor stops far short of what we mean by ministerial responsibility. But the future may yet show the justice of Bismarck's criticism.

A second criticism made by Bismarck upon the proposed amendment leaves small room for doubt in regard to the interpretation placed by the governments upon their draft. He objected to the amendment on the ground that it contemplated the creation of a federal organ outside of the Federal Council.¹ In the latter body, he argued, the several governments would be represented by their envoys, and hence they might, in a sense, regard its authority as their own. Greater concessions than they had already made could not reasonably be expected of them. They would regard it as a diminution of their authority and an encroachment upon their sovereignty if they were required to submit to an authority of which they did not form part and in whose discussions they did not have a voice.

Statements like these are entirely free from ambiguity. The value of the discussion lies in the fact that it brings out clearly the contrast between Prussian administration under Prussian responsibility and federal administration under federal responsibility. In it we see statesmen feeling their way toward

¹ Nothing could be more to the point than Bismarck's utterances. See *St. Ber.*, 388.

the solution of a great political problem. Bismarck had not failed to appreciate the necessity of keeping the Prussian administration of common interests in touch with the Federal Council. His idea seems to have been that the chiefs of these administrative departments should be associated with the chancellor as Prussian envoys to that body. They were not, however, to form a ministry with power to outvote their chief, who was to receive his instructions from the Prussian ministry. To place the administration of common interests under the guidance of the president of the Federal Council was as far as Bismarck could go in the direction of federal responsibility without sacrificing the principle of the responsibility of the chancellor to the Prussian government.

A number of amendments, looking toward the creation of a federal administration, had already been rejected when, pending the discussion of Article 18, which subsequently became Article 17, an amendment was adopted by a large majority which wrought a fundamental change in the draft presented by the governments. "The decrees and ordinances of the presidency," so ran the amendment, "shall be made in the name of the Confederation, and shall require for their validity the signature of the Chancellor of the Confederation, who thereby assumes the responsibility." The change, which, apart from the added clause "who thereby assumes the responsibility," seems mainly one of phraseology, transformed the chancellor into a federal minister at the head of a federal administrative system.

This amendment differed in important respects from the earlier attempts to establish a federal executive. The Radicals disliked the monarchical position of the Federal Council, since such a body could not be made responsible; and they wished to deprive it of its executive functions and to reduce it to the position of an upper legislative chamber. The series of amendments proposed by Ausfeld and his associates¹ represent this point of view. The executive authority was to be lodged in the King of Prussia, as *Bundes-Präsidium*, who was to wield it

¹ Sten. Ber., Actenstück, Nr. 23.

not through the chancellor, but through responsible ministers. The chancellor's position as Prussian envoy to the Federal Council seemed to the Left inconsistent with the responsibility which they were seeking to establish. Much nearer to the principle on which the constitution was drawn up were amendments introduced by von Bennigsen and Lasker, both moderate Liberals. The former proposed the appointment by the presidency of departmental chiefs who should share the responsibility of the chancellor. All governmental acts were to be done under the responsibility either of the chancellor or of the head of the department within which they fell.¹ Bismarck, however, protested strongly against colleagues who might overthrow their chief and so bring the King of Prussia, as head of the federal administration, into conflict with the King of Prussia, as President of the Federal Council. The proposition for the appointment of responsible ministers was again defeated; but later in the same session, in connection with another article, that part of von Bennigsen's amendment which decreed the responsibility of the chancellor was adopted without a division. The idea of a federal executive won the day in the form least inconsistent with the constitution submitted by the governments. Despite the establishment of a federal administration, foreign affairs and the navy were managed for a few years by Prussian bureaus, but under the direction of the chancellor.

The origin of the articles bearing on the position of the chancellor accounts for a curious difficulty of interpretation. Article 15 empowers the chancellor to preside over the Federal Council. But according to Article 17 the chancellor is minister of the Emperor, and as such he cannot be even a member of the body over which he is called to preside. It is only as King of Prussia that the Emperor is a member of the Federal Council, and consequently it is only as a Prussian envoy that the chancellor can enter that body and preside over its deliberations. All difficulty disappears when we remember that Article 15 regards the chancellor as Prussian envoy to the

¹ Sten. Ber., Actenstück, Nr. 48.

Federal Council, and that it was as an amendment to the present Article 17 that the change in his position was made.

The division of monarchical power between two organs might be expected to leave each of them feeble and to invite discord between them. Instead, however, of being weak and discordant, the government of the empire is strong and harmonious. The contradiction, however, between theory and fact, is only on the surface. In reality, though not in form, the King of Prussia is monarch of the empire. The resolutions of the Federal Council are in reality his decisions, though in form they are the decisions of the associated governments. Of the fifty-eight votes in the Federal Council, Prussia has seventeen, fourteen sufficing to defeat amendments to the constitution. Its envoy presides over the body and directs its deliberations. In case of a tie its votes count as well to break the tie as to form it, while upon a number of weighty subjects no change can be made in existing legislation unless the vote of Prussia is cast in the affirmative. It would be futile to inquire whether these constitutional provisions would suffice to secure the preponderance of Prussia, were they not supplemented by the prestige of a state which both in area and in population forms two-thirds of the empire, and whose warriors and statesmen were the founders of German unity. Moral influence indeed is not legal authority, but on the other hand Prussia's legal weight is but the necessarily inadequate legal formulation of its moral ascendancy. Whether a particular constitution will work well in a given country must depend on the political habits of the people of which it is but a partial reflection. The imperial chancellor, speaking sometimes in the name of the associated governments and sometimes as minister of the Emperor, but guiding either in the one capacity or in the other both legislation and administration, is the embodiment of the unity which underlies the division of monarchical authority.

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FOUR GERMAN JURISTS.

BRUNS, WINDSCHEID, JHERING, GNEIST.¹

OF the jurists under whose personal influence it was my good fortune to be brought during my studies in Germany, four of the most distinguished have since passed away: Bruns in 1880, Windscheid and Jhering in 1892, and Gneist during the past summer. To each of these men I owe debts of the kind that cannot be repaid; and the impulse to describe,

¹ Karl Georg Bruns was born at Helmstedt, in Brunswick, February 24, 1816; studied law at Göttingen, Heidelberg and Tübingen; practised for a short time in Brunswick; began to teach at Tübingen in 1839; was advanced to the grade of extraordinary professor in 1844; accepted a call to Rostock as ordinary professor in 1849; went to Halle in 1851; to Tübingen again in 1859; to Berlin in 1861, where he remained until his death, December 10, 1880. His published works were: *Das Recht des Besitzes im Mittelalter und in der Gegenwart* (1848). *Fontes iuris Romani antiqui* (1860; 5th ed. by Mommsen, 1887). *Das Wesen der bonafides bei der Ersitzung* (1872). *Die Besitzklagen des römischen und heutigen Rechts* (1874). *Die Unterschriften in römischen Rechtsurkunden* (1876). *Syrisch-Römisches Rechtsbuch aus dem 5ten Jahrhundert* (1880). To Holtzendorff's *Rechtsencyclopädie* he contributed the important articles on the history of the Roman law and on modern Roman law. Two volumes of essays (*Kleinere Schriften*) were collected in 1882. A sketch of his life and work was published by Degenkolb in 1881.

Rudolf von Jhering was born at Aurich, in East Frisia, August 22, 1818; studied law at Heidelberg, Munich, Göttingen and Berlin; began to teach at Berlin in 1843; accepted calls, as ordinary professor, to Basel, 1845; Rostock, 1846; Kiel, 1849; Giessen, 1852; Vienna, 1868; Göttingen, 1872. Here he remained, declining calls to larger universities, until his death, September 17, 1892. He was ennobled by the Emperor of Austria. His published works were: *Abhandlungen aus dem römischen Recht* (1844). *Civilrechtsfälle ohne Entscheidungen* (1847; 6th ed., 1892). *Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung* (4 vols., 1852-65; 4th and 5th eds., 1878-91). *Das Schuldmoment im römischen Privatrecht* (1867). *Ueber den Grund des Besitzschutzes* (1868; 2d ed., 1869). *Die Jurisprudenz des täglichen Lebens* (1870; 9th ed., 1893). *Der Kampf ums Recht* (1872; 10th ed., 1891). *Der Zweck im Recht* (2 vols., 1877-83; 3d ed., 1893). *Vermischte Schriften juristischen Inhalts* (1879). *Gesammelte Aufsätze* (3 vols., 1881-86). *Das Trinkgeld* (1882; 3d ed., 1889). *Scherz und Ernst in der Jurisprudenz* (1885; 4th ed., 1892). *Der Besitzwille: Zugleich eine Kritik der herrschenden juristischen Methode* (1889). From his literary remains: *Vorgeschichte der Indo-Europäer* (1894). *Entwicklungsgeschichte des römischen Rechts: Einleitung* (1894). Sketches of his life and character by de Jonge (1888) and Merkel in *Jahrbücher für Dogmatik*, vol. 32 (1893).

however inadequately, their lives and labors springs partly from the feeling that a tribute to the memory of these great teachers from some one of their American pupils is a duty of scholastic piety. But I am also influenced by the conviction that such a description will be of interest and value to the readers of this review. The life-work of these scholars cannot be set forth on purely biographical lines : to study it involves a study of the movement of German jurisprudence in the nineteenth century. To understand their efforts it is necessary to consider the scientific environment in which they grew up,

Bernhard Josef Hubert Windscheid was born at Düsseldorf, June 26, 1817; studied law at Bonn and Berlin; was employed in the judicial service 1837-40; began to teach at Bonn in 1840; was appointed extraordinary professor in 1847; accepted a call to Basel the same year as ordinary professor; went to Greifswald in 1852; to Munich in 1857; to Heidelberg in 1871; to Leipzig in 1874. Further calls to Strasburg, Vienna and Berlin were declined. From 1874 to 1883 he was a member of the commission appointed by the German Federal Council to draft a civil code for the Empire. He died October 26, 1892. His publications were: *Die Lehre des römischen Rechts von der Voraussetzung* (1850). *Die Actio des römischen Civilrechts* (1856). *Lehrbuch des Pandektenrechts* (3 vols., 1862-67; 6th ed., 1887). *Wille und Willenserklärung* (1878). *Zwei Fragen aus der Lehre der Verpflichtung wegen ungerechtfertigter Bereicherung* (1878).

Rudolf von Gneist was born at Berlin, August 13, 1816; studied law at Berlin; entered the Prussian judicial service and was advanced, in 1841, to the position of assistant judge; resigned, on political grounds, in 1850; was appointed, in 1875, a member of the superior administrative court (*Oberverwaltungsgericht*) of Prussia. — In 1848 and 1849 he was a member of the city council of Berlin; in 1858 he was elected to the Prussian Diet, and was reelected with unfailing regularity until his withdrawal, a few years ago, from active political life. From 1867 to 1884 he was a member of the Imperial Diet also. In 1883 he was appointed a member of the Prussian Council of State. He was ennobled by the Emperor Frederick III. — His academic career began, at Berlin, in 1839; he was appointed extraordinary professor in 1844; ordinary professor in 1858; and retained this position until his death, July 22, 1895. Among his more important publications were: *Die formellen Verträge des neuern römischen Obligationenrechts* (1845). *Adel und Ritterschaft in England* (1853). *Das heutige englische Verfassungs- und Verwaltungsrecht* (1857-63; 3d ed. of Part I under the title *Das englische Verwaltungsrecht der Gegenwart*, 2 vols., 1883-84; 3d ed. of Part II under the title *Selfgovernment, Kommunalverfassung und Verwaltungsgerichte in England*, 1871). *Verwaltung, Justiz, Rechtsweg, Staatsverwaltung und Selbstverwaltung nach englischen und deutschen Verhältnissen* (1869). *Die preussische Kreisordnung* (1870). *Der Rechtsstaat* (1872; 2d ed., 1879); *Gesetz und Budget* (Berlin, 1879); *Englische Verfassungsgeschichte* (Berlin, 1882); *Das englische Parlament* (Berlin, 1886). — Monograph by Walcker, in *Hinrichsen's Deutsche Denker* (Berlin, 1888); article by Bornhak, *Archiv für öffentliches Recht*, xi, 2 (1895).

the points of view which they inherited and retained or abandoned, the tendencies which they continued or opposed. To appreciate their influence it is equally necessary to consider the extent to which they furthered the development of their science upon lines already marked out, and the degree in which, by opening new lines of thought and study, they have given to its further progress new impulses and different aims. The problems which have engaged the attention of German jurists during this century are, in large degree, universal problems ; and the solutions which they have reached should be of interest to all who care for legal science.

I.

The present period of German jurisprudence begins, as far as any historical period can be said to have a distinct beginning, with Savigny,¹ whose treatise on the *Law of Possession* made him famous a dozen years before Bruns (the eldest of our four) was born, and who closed his career as a teacher just as Bruns, Gneist and Windscheid were beginning theirs. Savigny was the founder of the historical school which is still dominant in modern legal science. Against the conception of "natural" law, universal in its dominion, eternal and unchangeable in its essence, progressive only in the sense that a fuller recognition and more perfect comprehension of its principles may be progressively attained, Savigny set up the conception of law as an historical product of the life of each people or nation, varying according to the national genius, developing in each nation with that nation's entire social development. A large portion of his life was devoted to studying the history of the Roman law, in both the ancient and the mediæval world. The great monument of these investigations is his *History of the Roman Law in the Middle Ages*.

In addition to these historical studies, however, Savigny carried on throughout his life, with rare acuteness of analysis, the labor of resolving the traditional institutions of law into

¹ Born 1779; died 1861.

their ultimate juristic elements. With this he combined, and with no little success, the effort to reformulate and refine the synthetic conceptions with which legal science operates. Of these labors in systematic jurisprudence the chief results were incorporated in his unfinished *System of Modern Roman Law*.

An important impulse to the historical investigation of the Roman law had already been given, toward the close of the sixteenth century, by the French jurist Cujacius; and a serious attempt to establish a more logical and coherent system of Roman law had been made about the same time by his countryman Donellus. But the historical impulse was checked in the seventeenth and eighteenth centuries by the predominance of natural-law theories; and in the systematic field the work of the great Dutch jurists on whom the mantle of Donellus fell was more and more directed to the new science of international law. In Germany, still absorbed in the practical labor of assimilating the "foreign laws," civil and canon, and fitting them to its own social conditions, neither Cujacius nor Donellus had found any important following. In this country the new impulses given by Savigny were especially needed, and the seeds sown by him have brought forth an abundant harvest, not in Germany only, but throughout the civilized world.

II.

Every effective human impulse, however, is one-sided and provokes a more or less legitimate reaction. Insistence upon one portion of the truth tends to obscure other portions, and these find new exponents and defenders. It was asserted, and not without reason, that Savigny and his immediate followers regarded the evolution of law as an organic social process upon which the individual reason and the individual will have little influence; that they ignored, or at least underrated, the conscious and reflective element in legal development; and they were accused, not without justice, of "quietism" or fatalism. If legal changes, whether made by custom or by legislation, are, as Savigny maintained, merely the expression of slowly

ripening popular instincts, then such changes are sure to come when these instincts are sufficiently ripened. To hasten the process may be impossible; it will certainly result in mistakes. Such was, in fact, the feeling of Savigny, who was politically an extreme conservative;¹ and the attitude of his immediate followers toward reformatory legislation was far from sympathetic. It was also asserted, and again with reason, that the historical jurists insisted too much upon the national character of law and ignored its human character. After all, Greeks, Romans and Teutons were, in the first place, men with human feelings, ideas and tendencies; in all the systems of law that have existed or now exist, there is much that is common, and the common element is the most significant. These points of antagonism, or rather these supplementary considerations, gave birth to the so-called philosophical school, or, as Thibaut, its leading representative, preferred to call it, the "philosophical-historical" school. A characteristic controversy² between Thibaut and Savigny, in which the former advocated and the latter opposed the construction of a civil code for all Germany, brought out most clearly their different attitudes towards legislation. The attempt of Gans, another leader of the philosophical school, to trace the law of inheritance in its "world-historic development,"³ marked with equal clearness the reaction against the purely national point of view.

What is the attitude of German jurists to-day toward these controversies? What, in particular, was the attitude of the jurists who form the subject of our present study? As regards the emphasis laid by the philosophical school upon the human and universal character of law, at least in its fundamental conceptions, Bruns has well said that this led to the development of a purer legal philosophy,

¹ Compare with the conservatism of Savigny, the historical jurist, that of Burke, who regarded politics preëminently from the historical point of view.

² Thibaut, *Ueber die Nothwendigkeit eines allgemeinen bürgerlichen Rechts für Deutschland*. Savigny, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft*. Both pamphlets appeared in 1814.

³ Gans, *Römisches Erbrecht in weltgeschichtlicher Entwicklung* (4 vols. 1824-1835).

which no longer regards as its task the discovery of an absolute law of nature, but only seeks to recognize, in their universality and necessity, the general conceptions and ideas which attain concrete historical manifestation in the single national systems of law.¹

He might have added that the philosophical school furnished the theoretical basis for the new comparative science of law, which is still to-day in the earlier stages of a most promising development.

Jhering, who in the first book of his *Spirit of Roman Law* made brilliant use of the comparative method, condemns, in his introduction to that work, the narrow national view taken by the historical school. "Legal science," he says, "is brought down to the plane of territorial jurisprudence. The scientific boundaries coincide in jurisprudence with the political."² After emphasizing the interdependence of nations, and pointing out that the legal development of the modern world, or at least of the modern European world, has been substantially a general and not a national movement, he writes:

And however brief, from the point of view of the ages, is the fragment of history thus far unfolded in this new legal epoch, is it not already clear that it is the thought of universality that gives its character and furnishes the key to the present era? It was with a correct instinct for this trend and drift of modern law that the natural-law school proclaimed its doctrine of the universality of law, elevated above time and place. However little scientific value I may attribute to the works produced in this field, the *direction* which the natural-law theorists pursued was as decidedly in line with the peculiar course of modern history as that of the historical jurists, with their one-sided insistence upon the principle of nationality, was divergent from it. The law of nature, far from standing outside of time and ignoring actual conditions, was in fact but an idealization of existing conditions.³

Gneist also declares, in one of his later monographs, that a further development of legal science can be attained only by

¹ Bruns, *Das heutige römische Recht*, in Holtzendorff's *Rechtsencyclopädie*, 3d ed. (1877), p. 336.

² Jhering, *Geist des römischen Rechts* (3d ed., 1873), vol. i, p. 15.

³ *Ibid.*, p. 11.

taking up again the natural-law doctrines of the past, and giving them further development.¹ The monograph itself is an interesting attempt to sketch in broad lines the development of human law in general, and of modern European law in particular.

These utterances of men who regarded themselves as followers of Savigny sufficiently indicate that, on this point at least, the antithesis of the historical and philosophical schools has disappeared. It is fully recognized that each was right in its main contention.²

As regards the attitude of the two schools towards legislative reform, it is sufficient to point out that there is to-day no diversity of opinion among German jurists regarding the desirability of a German code ; although, as was pointed out in a previous article of mine in this review,³ the question to-day is not of the superiority of legislation over usage, of written over unwritten law, but the preference of general federal law to divergent state laws. It may be added that nearly all modern German jurists agree with Savigny that Germany was not ready for codification in 1814.

III.

Of less interest to science at large than the philosophical reaction, but of more practical consequence to Germany, was the "national" opposition. Savigny and his disciples were attacked by the nationalists not as historical jurists — for the armory of historical jurisprudence furnished the assailants with their best weapons — but as "Romanists," as champions of the Roman law and advocates of its continued supremacy in

¹ "Dies Vorwärtsschreiten [der Wissenschaft] wird nur in der Wiederanknüpfung an die naturrechtlichen Lehren der Vergangenheit liegen können, und in der Weiterführung derselben." *Zur Lehre vom Volksrecht, Gewohnheitsrecht und Juristenrecht*, in *Festgabe für Beseler* (1885).

² So Windscheid, also, in his lectures on Pandects, in 1878: "The correctness of both views is now fully recognized. The antithesis was long ago surmounted."

³ *State Statute and Common Law*. *POLITICAL SCIENCE QUARTERLY*, vol. iii, pp. 155-160 (March, 1888).

Germany. The attack came from the "Germanists," the defenders of Teutonic ideas and institutions.

In the sixteenth century, at the period of the completed reception of the Justinianean codes, and for some two centuries afterwards, there were no Germanists in Germany — at least among the jurists. The only protests against the overwhelming triumph of the Roman law, and against the partial destruction of German legal institutions, came from laymen — knights and peasants. The jurists had all been trained in the Roman law, first in Italy and later in the German universities. They were carried away by its cosmopolitan breadth of spirit, its logical symmetry, and above all, by the fact that it furnished ready solution for all the new problems with which German folk-law was clumsily wrestling. To them the native Germanic customs were barbarous and irrational, things in which no intelligent man could take an interest. To their attitude was due not the fact of the "reception,"¹ but its completeness. In

¹ The prime cause of the reception, not in Germany alone, but throughout Europe, was the change in economic conditions which followed the revival of commerce in the eleventh and twelfth centuries. Social life became more complex, and the simple customs by which the greater part of Europe was governed became inadequate. One of the first results of the commercial revival was the extension of the mercantile law of the Eastern Mediterranean, which was largely Roman or Græco-Roman in its structure, over the new highways of trade — along the coasts of the West Atlantic and of the North and Baltic Seas, and along the great land routes between these seas and the Mediterranean. (*Cf.* Goldschmidt, *System des Handelsrechts*, vol. i.) This body of law, however, was applicable only to traders and to distinctly mercantile transactions. For the rest of the people new law was needed, and the law-books of Justinian amply met the need. Where the Roman law was theoretically in force already (*e.g.*, in South France) such rude compilations as the Breviary of Alaric were supplanted by the *Corpus Iuris Civilis*. In other parts of Europe a true "reception" of the Roman law occurred. In those countries which were not at first touched by the revival of trade, and where simple economic conditions continued to prevail (*e.g.*, in the old cantons of the Swiss Confederacy), the Roman law was not received.

A negative condition of the reception was the inability of the mediæval state to furnish the new law that was needed. Feudalism had so disintegrated political authority that in most parts of Europe there were no organs for the development of national law, whether by legislation or by decisions on appeal. Recourse was therefore had to the older laws of the Roman Empire. Their application was facilitated (not caused) by the general belief that all authority in Europe was ultimately derived from the Roman Empire, and that the Roman Emperors, from Augustus down, were the predecessors of all mediæval rulers. Where this condi-

theory, the Roman law was received as subsidiary law, to be applied only when the local law furnished no rule. But the jurists recognized German law only in the form of local custom and insisted that every such custom was a fact to be pleaded and proved by the party who desired its application. When it is remembered that questions of fact, as well as questions of law, were decided by the learned judges, themselves doctors of the civil law, the effect of the procedural rule just stated can easily be imagined. In all parts of Germany the German law was more or less submerged and lost ; more in the South and West, less in the North and North-East.¹

Not a few Teutonic ideas and institutions, however, were preserved by putting them, so to speak, into togas and teaching them to talk Latin. They found shelter and recognition in the so-called *novus usus pandectarum*, a collective designation of the changes wrought in the Roman civil law in mediæval practice. Some of these disguised natives of Ger-

man, where political disintegration did not exist, neither economic changes nor the fiction of "continuous empire" was strong enough to secure the reception of Roman law. In England, where the Norman conquest had so solidified the state that the King in Parliament could enact statutes for the realm, and the King's courts could develop the *lex terræ* by their decisions, the new law required was worked out on the basis of existing Anglo-Norman customs. In Spain, where the struggles with the Moors had strengthened royal authority, the reception of Justinian law-books was averted by the publication of a Spanish code, largely influenced by Roman ideas, but still an independent and national system of law. In North France, where in the fourteenth century the royal power was so increased that procedure could be reformed by royal ordinances, and appeals carried to the King's courts, the Roman law was not received as law but was invoked simply as *ratio scripta* when the customs were silent. Here, as in England, the basis of the legal development remained Teutonic.

In Germany and in the Netherlands the "practical," as distinguished from the "scientific" or theoretical reception of Roman law, was generally synchronous with the appearance of the "learned judiciary," i.e., with the substitution of governmental justice administered by professional lawyers for popular justice administered by lay judges. The conviction that Roman law was applicable and authoritative, and the attempt to apply it, of course hastened this change, and the control of the courts by men trained in the civil law was the decisive element in the practical reception.

¹ In the Saxon lands much of the Teutonic custom was preserved through private compilation which obtained great authority, the *Sachsenspiegel*. A somewhat similar compilation existed in South Germany, the *Schwabenspiegel*.

many crossed the Alps in the very van of the Roman invasion. They had already received Roman citizenship in the Italian courts. Still others came over in sacerdotal vestments. They had been naturalized at an even earlier period in Rome itself, and figured as canons of Holy Church.¹ After the reception of the foreign laws, and largely in consequence of a popular reaction against them, still other fragments of Teutonic law were preserved in official compilations of "statutes" or local rules of law.

That any community of origin existed between those rules of German law which had found shelter in the canon law, or in the new usage of the *Pandects*, and which were, therefore, common law, and those other rules which had survived the reception as local customs or statutes, was not generally understood until the present century. Not until the eighteenth century were even the various local customs recognized as fragments of an earlier whole.² It was through the labors of Carl Friedrich Eichhorn,³ a contemporary and friend of Savigny, that German law was raised to the rank of an independent juristic discipline. For many years now the Germanists have occupied in every university a position fully coördinate with that of the Romanists or Pandectists, and an acquaintance with the history and institutes of German law is as necessary

¹ In Germany, as in Italy, the canon law overrode the civil when the two came in conflict.

² In 1643 one Herman Conring, a physician, published a treatise, *De Origine Iuris Germanici*, in which the results of later historical investigation were largely anticipated. Curiously enough the treatise was called forth by a current theological controversy. The jurists paid no attention to Conring's work. In the eighteenth century the common origin of the various local customs was discovered by members of the legal profession, and lectures on German law began to be delivered in the universities. This innovation was at first regarded with little favor. The Prussian Chancellor Cocceji, having been charged by Frederick William I with the preparation of a general civil code, submitted for the King's approval, in 1738, a preliminary report concerning the scope and plan of the proposed codification. In this report the chancellor went out of his way to express his contempt for that "imaginary German law which sundry tutors (*Privat-Doctores*) have taken the liberty to invent." His code was to be based on natural reason. When drafted it turned out to be substantially Roman.

³ Born 1781; died 1854. His great work was his *Deutsche Staats- und Rechtsgeschichte* (1808; 5th ed., 1842-44).

for university degrees and bar examinations as is a knowledge of the Roman law.¹

Between the leaders of the two schools, the Romanistic and the Germanistic, there was no controversy. Savigny himself, in pleading against immediate codification, had insisted that the different elements of which the existing law of Germany was composed were still imperfectly comprehended, and had urged a thorough historical study of Roman and of German law; and Savigny and Eichhorn coöperated in establishing the *Zeitschrift für geschichtliche Rechtswissenschaft*, which from the outset gave impartial shelter to the fruits of investigation in both fields. But the younger Germanists, with the heat that naturally resulted from their struggle for democratic equality, opened an attack upon the Roman law. They disputed the rightfulness of its supremacy. They denied that it had any legitimate place in Germany. Savigny's theory of the national character of law gave them an admirable opening. He had declared, in the introductory article of the first number of the *Zeitschrift*, that the law of a nation was the product "of its innermost nature and its history." "If this be true," said the Germanists, "what justification is there for the reception of the Roman law in the fifteenth and sixteenth centuries? What justification is there for its continued supremacy? Ought it not to be thrust out as an illegitimate interloper, and should not the teachers of the historical school be the first to demand its exile?" Savigny, of course, had an answer. In the evolution of every national law there comes a period when it ceases to be the direct and immediate product of the national consciousness. Its further development falls into the hands of a class, the lawyers, and ultimately into the hands of legislators. At the time of the reception the jurists represented the German people, and their reception of Roman law made it German law. To this the Germanists responded that the legal profession might

¹ At least, in theory. Practically, the time devoted by the German law-student to Roman law is at least thrice that given to the German law, and the relative stress laid upon these subjects in the examinations is roughly in the same proportion.

indeed, represent a nation, as was the case in the development of the ancient Roman law, but that the German jurists of the fifteenth and sixteenth centuries had divested themselves of all national feeling and were no true representatives of Germany.

The national agitation against the Roman law reached its highest point in the forties.¹ The events of 1848 raised new questions, political rather than juristic in character, and the discussion between the Romanists and the Germanists terminated in apparent agreement. It was generally admitted by the Romanists that the way in which the Roman law had been received was unfortunate; that the overturning of established German customs was indefensible. It was conceded by the Germanists, on the other hand, that the reception of the Roman law was not on the whole a misfortune; that the appropriation of this portion of the vast inheritance of the ancient world had greatly enriched modern European civilization.

Jhering justifies the reception of the Roman law in Germany on the broad ground that no nation can attain the highest civilization save by participation in the civilization of the world.

The life of nations is no isolated existence side by side, but, like that of individuals in the state, a common life; a system of reciprocal contact and influence, peaceful and hostile; a giving and taking, borrowing and bestowing; in short, a vast business of exchange that embraces every side of human existence. The same law that governs the physical world exists for the spiritual: life is reception from without and internal assimilation: these are the two basic functions on whose maintenance and balance rest the existence and health of every living organism. To prevent reception from without and condemn the organism to development "from within outwards," is to kill it. That sort of development begins with the corpse.²

¹ Among the more important contributions to the controversy, on the Germanistic side, were: Kjerulff, *Theorie des gemeinen Civilrechts* (1839); Bluntschli, *Die neuern Rechtsschulen der deutschen Juristen* (1841); Beseler, *Volksrecht und Juristenrecht* (1843).

² *Geist des römischen Rechts*, 3d ed., vol. i, pp. 5, 6.

This vast system of exchange has always as well as material goods; and it is from that he condemns the national standpoint of jurists.

In the ship that brought wares, gods went by, morals, religion, words, ideas, prejudices, faith, art, science, — all follow the rule of international influence. And law? Does that alone represent the universal rule of civilization? That is the one we are combating, and which we must combat in place for the Roman law, — the doctrine of the law develops purely from within each nation. To deduce juries, because they did not spring up on the constitutional form of government is of foreign origin to be condemned. . . . The question of the legal institutions is not a question of national expediency, of need. No one will fetch a thing he has as good or better at home; but only a few of the cinchona because it did not grow in his

A warning example of the results of nationalism is afforded by China, "the Don Quixote of nationality."

The special justification of the reception in mediæval Europe Jhering finds in the universal character which the Roman law had in the first centuries of the Christian era, the character which its reception has given to modern law. In this, as in other matters, Rome stands for the unity of communication between the ancient and the modern, and here, as always, Rome stands for the universality as against that of nationality. No one who reads the *Spirit of the Roman Law* can forget the influence with which the book opens.

Thrice has Rome dictated laws to the world: nations together in unity: the first time, when she still stood in the fullness of its power, in the u

¹ *Geist des römischen Rechts*, 3d ed., vol.

second time, when that people had already perished, in the unity of the church; the third time, in consequence of the reception of the Roman law in the middle ages, in the unity of law; the first time by external coercion, by force of arms; the second and third times by force of intellect.

Windscheid goes a step further towards the Germanists. He remarks that Jhering's theories of international exchange and of the supra-national element in law, particularly in the Roman law, are "certainly true. But it does not follow that the peculiar genius of each nation should not in last instance determine whether any thing is or is not properly *its* law."¹

Bruns also emphasizes the universal side of the Roman law, and seeks to define it.

The significance of the Roman law in the history of the world lies chiefly in the fact that in it was developed the abstract conception of the personal right (*des subjektiven Rechts*), and especially the general and equal attribution to individuals of private-law rights. Herein lies what is called the universal character of the Roman law. This does not mean that the Roman law is eternal and absolute law for all nations and times, or that it alone can satisfy the needs of any modern nation, but that in it an essential and general element of law, which must find place in (and, in a sense, form the basis of) every system of law, was worked out in so complete a way as to furnish all nations and times with a model of theoretical and practical value.²

He emphasizes, as does Jhering,³ the new touch of universality which the Roman law gained by its reception in the middle ages.

We must guard ourselves carefully against the notion that what is called modern Roman law is simply that part of the Roman law that is still in force to-day. In modern Roman law are embodied the labor, intellectual development and science of all modern Europe. Modern Roman law is by no means the actual law of Rome. Its substance from beginning to end is permeated with modern ideas.

¹ Windscheid, *Pandekten*, § 10, note 4.

² Bruns, *Geschichte des römischen Rechts*, in *Holtzendorff's Rechtsencyclopädie*, 3d ed., p. 81.

³ *Geist des römischen Rechts*, vol. i, pp. 10, 11.

Its entire form is, in even higher degree, an essentially modern creation of the modern mind, in which nearly all nations have participated.¹

As to the practical inferences, also, to be drawn from these considerations the jurists have reached substantial agreement. That which is really universal in the Roman law is to be retained and developed; that which is based upon conditions peculiar to the ancient world, or upon ideas of justice and expediency that were specifically Roman, is to be rejected. Jhering puts all this in a single phrase which has become famous: "Through the Roman law, but beyond and above it."²

With these declarations of the Romanists the Germanists seemed satisfied. Their own utterances were not dissimilar. But the apparent agreement was largely due to the acceptance of a common formula which each party could interpret and apply as it saw fit. How much of the ancient Roman law was really universal and how much temporary and national? How far did the practice of the mediæval Italian and German courts eliminate the antiquated and foreign elements? How far had institutions originally foreign to German instincts become German by adoption? These are questions upon which differences of opinion are perfectly natural; and given an academic system under which a large number of jurists devote their entire time to studying and teaching the Roman law, while another considerable body is wholly immersed in early Teutonic customs and recent German legislation, such differences were certain. But for forty years Germanists and Romanists lived together in peace, or armed neutrality; taught as they thought, and left it to the students to reconcile or choose between their opposite opinions. The publication of the Imperial draft code in 1888 opened the sluice-gates of the academic reservoirs, and in the flood³ of controversial literature that at once burst forth, the degree of divergence between

¹ Bruns, *Das heutige römische Recht*, in Holtzendorff, p. 334.

² "Durch das römische Recht, aber über dasselbe hinaus." *Geist des römischen Rechts*, vol. i, p. 14.

³ A catalogue of this literature, published by Puttkammer and Mühlbrecht in 1892, contains some six hundred titles.

Romanistic and Germanistic opinions is strikingly disclosed. Not a few of the Romanists are disturbed by the number of uncouth Gothic details that figure in the plans of this new temple of justice, and have hastened to plead for a stricter adherence to classical lines. But their mild protests are drowned in the cries of wrath that issue from the Germanistic camp. "Doctrinaire devotion to scholastic concepts," "contempt for German law and for the popular consciousness of right," — these phrases will serve, without further extracts, to show what passions have been slumbering through the forty years' truce.

But this revival of the old controversy runs beyond the limits of our present theme, for our four jurists took no part in it. Bruns was already dead; Windscheid was restrained from entering into any discussion of the code by the fact that he had been one of the commission of codification; Gneist had long devoted himself entirely to public law and stood aloof from purely private-law controversies. Jhering indeed published a criticism of the code,¹ but his objections had little to do with the national controversy.

IV.

The attempt to codify the private law of the empire has given practical importance to-day to the disputes of the Germanists and the Romanists; the codifiers have been obliged to choose or compromise in numberless cases between opposed views of legal relations; but it may well seem as if the controversy that raged fifty years ago, when no general codification was in sight, was purely academic. This was not the case. The Germanists had a practical grievance against Savigny and his school. The historical researches prosecuted by the latter had clearly shown that the Roman law, as applied by the German courts, was in many respects a different thing from the Roman law of the *Digest*. Starting with the theses that it was Roman law that had been received and that the authentic

¹ Besitzwille, pp. 470-534.

exposition of the Roman law was to be found in the law-books of Justinian, Savigny and his followers were disposed to treat the modifications introduced by mediæval practice as aberrations, and the influence of the school was thrown in favor of a reversion to the law of the *Digest*. Their arguments actually changed¹ in many respects the practice of the German courts in the common-law territories, *i.e.*, in those parts of Germany where the Roman law had not been superseded by modern codes. Savigny and his disciples were therefore accused of having added a fresh injury to the original wrong of the reception by completing the reception.

Here again, since 1848, the Romanists have, to some extent, seen the error of their ways and drawn nearer to the Germanists. Mediæval modifications of the Roman law are no longer dismissed as mistakes due to ignorance. It is recognized that, in many instances, they represent the further development of progressive tendencies revealed in the later Roman jurisprudence and legislation; in other instances, the adaptation of the Roman law to different social and economic conditions; and, in many cases, the acceptance of legitimate or at least defensible Teutonic points of view. The change in the

¹ This partial revolution of judicial practice was made possible by the attitude of continental European theory towards judicial practice. The German jurists, like the French, almost uniformly deny that decisions make law. In view of the historical facts their attitude seems inexplicable. They teach that the Roman law was largely developed by "interpretation"; that old German law was developing along the same lines when its growth was arrested, first by feudal disintegration of judicial authority and then by the reception of the foreign laws; that the practical reception of the Justinianean law was accomplished through its acceptance by the "learned judiciary"; that the Roman law was received as modified by Italian practice, and that it was subjected to further modifications in the German practice,—and yet they do not concede that judicial custom, as such, is law. They go no further than to admit that the practice of the courts may in some mysterious way be transmuted into customary law—or rather, that it might be and perhaps was so transmuted in the middle ages, although the process is no longer possible to-day. The leading Germanist of the present day, Brunner, sees and expresses this point clearly. He writes: "Romanistic theory and practice are still in large degree unable to grasp the indubitable truth that the results of the practical reception, even where they rest upon a misunderstanding of the sources of the Roman law, exclude the application of pure Roman law."—*Quellen und Geschichte des römischen Rechts*, in Holtzendorff (5th ed., 1890) p. 293.

Romanistic attitude was, in no slight degree, the work of Bruns. He was one of the first to make a serious study of mediæval theory and practice in a special field.¹ He selected that field in which Savigny had begun his crusade for pure Roman law — possession. Bruns's *Law of Possession in the Middle Ages and the Present Time*, published in 1848, was not merely a finished presentation of the results of careful research and an important contribution to legal history: it was an explanation and, in some degree, a justification of the changes introduced by the mediæval jurists. Bruns himself, in this as in his subsequent writings on possession, remained, in principle, an adherent of the Roman theory as reformulated by Savigny, — the theory that finds the characteristic element of juristic possession in the intention (*animus*) of the possessor, — and he exhibited little sympathy for such changes in the law as seemed to him irreconcilable with this theory. The same may be said of Windscheid.² Jhering, however, in his last important work, *Possessory Intention*, not only gives a sweeping endorsement to nearly all the changes introduced by mediæval courts and modern legislators, but carries his assault upon the Romanistic doctrine back of Savigny. He finds the first false step, to which all subsequent aberrations are due, in a bad reason given by Paulus for a correct statement of positive law.³

Another valuable bit of research in mediæval legal history is Bruns's study of the presumption of death in case of disappearance, in which he shows how German custom, modified by a verse from the *Psalms* and a dictum from the *Digest* regarding usufruct, produced the rules which have found their way into the principal modern codes.⁴ The chief importance of these investigations, and of other similar studies to which they furnished an incentive, lies in the fact that mediæval legal development was no longer treated with contempt, but was taken seriously and examined critically.

¹ Savigny's *History of the Roman Law in the Middle Ages* is rather a history of the civil law as an entirety, with especial reference to its literary treatment, than a study of the development of single legal institutions.

² Pandekten, § 162.

³ Besitzwille, pp. 269-300; 457 *et seq.*

⁴ *Jahrbuch des gemeinen Rechts*, vol. i, p. 5 (1857).

V.

We have thus far confined our attention to the controversies aroused by Savigny's historical theory and by the work of the historical school in the Romanistic field. We have now to note the results of the impulse which he gave in the domain of systematic jurisprudence. Briefly stated, these results were, in the first place, a tendency to excessive generalization, a gradual and unconscious transfer of juristic labor from the field of legal science proper to that of legal philosophy; and then a reaction towards a more practical jurisprudence. Jhering was the leader of this reaction.

The power of generalization which the Germans possess in so high a degree is perhaps the chief factor in their scientific triumphs. Patient research furnishes the material with which science deals, but to make anything of this material it is necessary to discover the principles which underlie and explain — or at least serve to correlate — the facts. But every marked power carries with it the risk of abuse. Not only does the love of generalization easily lead to useless abstraction; it is attended by other and more serious perils. There is the danger of forgetting that the so-called principles of a science are really working hypotheses; that they have been obtained by induction and are to be tested in their application. There is the impulse to wrest evidence to their support and to ignore or evade such facts as prove intractable. There is even, with minds of a certain sort, a tendency to ascribe to accepted principles a character of finality — a truth superior to the apparent truth of mere facts. The more abstract the generalizations, the greater is the harm which such tendencies may entail.

Savigny's own systematic work was not wholly free from these faults, but in his case they were checked by a strong sense of the practical. He was fundamentally more lawyer than philosopher. Among his followers, however, some of whom were obviously intended by nature for philosophers rather than for lawyers, the tendency to excessive abstraction

and to undue valuation of its results ran riot. Puchta¹ in particular, the leading Romanist of the middle period between Savigny and the contemporaries of Jhering, carried idealistic jurisprudence to a point not before attained and hardly exceeded since. To Jhering, in the earlier period of his revolt, Puchta seemed the incarnation of the tendencies against which he had declared war. At a later period he carried the attack further back and directed it against Savigny, and ultimately, as we have seen, against Paulus. Even then, however, he remained so far true to his first scientific enmity that he could find nothing worse to say of the Roman judge and jurist than to term him "the Puchta of the ancient world." He finds in both

the same fanaticism of juristic construction, which in its zeal overlooks the yawning gaps between the points of view adopted and the existing law; . . . the same blind adherence to legal logic, which infers outright that whatever does not suit it is impossible and whatever does is necessary; . . . the same intolerance of the views of others, and even of the rules laid down by the legislator, when they do not coincide with the concepts which these two jurists have arranged to their own satisfaction. Intellects, both of them, above the common stature; but violent, scientifically despotic natures, implacable doctrinaires.²

In their definitions and statements of principles, as in their whole theoretic construction of the law, Puchta and his followers abandoned to a large extent the method of independent induction from purely juristic data, and took their concepts ready-made from the professional philosophers, especially from Hegel. The philosophy of Hegel has influenced German jurisprudence in various ways. It helped to produce the "philosophical" reaction against the national theory of legal development.³ It has also helped to give German legal theory an individualistic character. Hegel regarded law as a means for the attainment of true liberty; he described the evolution

¹ Born 1798, died 1846.

² Jhering, *Besitzwille*, pp. 283, 284.

³ Gans, the champion of the universal or cosmopolitan point of view, was a disciple of Hegel and edited Hegel's *Philosophy of History*.

of law as "the development of the idea of freedom"; and found the essence of individual freedom in the rational freedom of the individual will.

In pronouncing law to be more a system of liberty than a system of restraint, in emphasizing the element of freedom rather than the element of coercion, Hegel was perhaps influenced by the form in which the Roman law has come into the modern world. The only portion of that law which has survived and continued to influence European civilization is the portion which deals with private relations and in particular the law which governs property relations. The constitutional, the administrative, and the criminal law of the Roman Empire are as dead as Julius Cæsar; the Roman private law is a living force. In every system of private law there is a wide range of individual autonomy — the state reaches its ends in private law through liberty as distinctly as in criminal law it reaches its ends through restraint — and in no system of private law is the field of individual freedom more generously measured than in the Roman. Add to this the fact that the Roman law — *i.e.*, the Roman private law — has been for centuries the general law of Europe, as compared with which all other laws have seemed a mass of local and special rules, and the influence which the private-law point of view has exercised upon European thought in general, and which it may have exercised upon the thought of Hegel in particular, becomes sufficiently intelligible. These facts again explain the readiness with which the German jurists, especially those of the Romanistic school, have accepted Hegel's one-sided view of law.¹ Lawyers everywhere are apt to regard private law as *the* law, and the Romanist has a better excuse for this tendency than has the English lawyer.

Hegel's position that legal liberty is freedom of will rather than freedom of action or conduct has also some apparent basis in the Roman law. The Roman jurists laid much stress upon

¹ It may, of course, be urged that the prohibitions of the law, the restraint which it imposes, serve to protect individual liberty; but it is equally true that the attribution of rights to the individual operates to the restraint of others. In fact the two modes of regarding law are not antagonistic but complementary.

animus, voluntas, etc. There is, to be sure, nothing to show that the Roman jurists ever thought of will or intention as obtaining legal significance otherwise than through its revelation in word or deed; there is, in fact, evidence that the intention which a man's language or conduct would naturally suggest to others seemed to them much more important than his real intention; but their curt designation of the expressed will and the indicated intention as will and intention simply, and the importance which they ascribed to the individual will in determining legal relations, lend color to Hegel's assumption. The real explanation, however, of his theory that freedom is freedom of will is perhaps to be sought in the fact that he lived under a system of government which tolerated relatively little freedom of conduct.¹ His view of liberty seems as natural a product of governmental absolutism as Kant's theory of the "categorical imperative" in the field of ethics. But whatever its basis, Hegel's theory has had great success among German lawyers. Their definitions and statements of principles are almost uniformly dyed in the Hegelian color. Not only is a legal act — a contractual promise, for example, or a conveyance — "a declaration of will," but a right is regularly described as "a power of volition," the protection of possession is justified on the ground that the law respects "the realized will," — and so on indefinitely.

Against these tendencies in German jurisprudence — against the over-valuation of abstractions in particular — Jhering waged incessant war for the last thirty years of his life. It would have been difficult to find in all Germany a man better fitted to champion the cause of "practical jurisprudence." He came of that Frisian stock which is still most closely allied, in temper as in blood, to the English; he was by race instinct a realist.

¹ Perhaps, too, — since the position of a nation in the world at large affects the philosophy of its members, — the weakness of Germany in consequence of its disunity had something to do with Hegel's doctrine of liberty. Heine's remark that the Frenchmen ruled the land, the Englishmen the sea, and the Germans the realm of dreams, seems in point. And perhaps Heine's more famous saying that "the Englishman loves liberty like his lawful wife, the Frenchman like his mistress, and the German like his grandmother," may be construed as a satire upon the Hegelian conception of freedom.

He possessed, also, in high degree, the quality of mind that makes the lawyer — the power of brushing aside the accidents of a problem, and concentrating his attention upon its essence. He was a master of dialectics, quick to discern the weakest point in his adversary's logic. He had both wit and humor, and knew how to use them; he could make an untenable position manifestly absurd. Finally, no German of our day has commanded a more brilliant and persuasive style.¹ Its very defects — a certain diffuseness, a habit of saying the same thing several times before the exact formulation of the thought is attained — have their charm; to read him is to listen to the discursive talk of a full and ready speaker; the personal note, which so strongly influences a listener, vibrates from the printed page. These defects, moreover, — if they be defects, — were far outbalanced by positive excellences. He could make the most abstract theme concrete, the most technical question interesting, by his facility of suggestive illustration; and he had the power of making his ideas current by rounding them into sparkling epigrams. No legal writer of our day, not even Maine, has counted in his public so large a proportion of laymen. Nor was Jhering's public German only; French and Spanish translations of his *Spirit of the Roman Law*, and French versions of several other books and pamphlets gave him a cosmopolitan audience. To English readers, unfortunately, only his *Struggle for Law* is accessible, and the translation of this pamphlet leaves much to be desired.

Into his agitation against abstract jurisprudence,² Jhering, by his own account, brought the zeal of a convert. He has more than once described his change of heart; humorously in the anonymous *Confidential Letters*³ with which he opened

¹ In recommending to us, his students, Jhering's first book on possession, Windscheid, who disagreed with the author's conclusions, warned us that we must read the book critically, "because everything of Jhering's is written with a brilliancy (*Glans*) and a power of persuasion (*Ueberredungskraft*) that are almost irresistible."

² Other terms employed by Jhering are "speculative," "scholastic," "formalistic" jurisprudence, and *die Begriffsjurisprudenz*.

³ *Vertrauliche Briefe über die heutige Jurisprudenz*, published 1860-66 in the *Preussische* (later *Deutsche*) *Gerichtszeitung*; reprinted in *Scherz und Ernst* (1885).

the conflict ; seriously in the last part of his *Jest and Earnest*,¹ and in the preface to his *Possessory Intention*.²

There was a time [he writes] when I accepted Puchta as master and model of the correct juristic method, and when I was so captivated by that method that I was capable of going beyond my model. . . . That in the legislative embodiment [of legal theories] any other considerations were to be regarded except the desirability of *a priori* logical construction, I did not then dream ; and I still remember how low an opinion I held of my friends among the practising lawyers who could not appreciate the coercive force of my ideas and deductions. . . . But then [about 1860] came the revulsion ; not from within, but through external influences ; through active intercourse with practitioners—an intercourse which I have always sought, cherished and turned to my advantage ; through the occasions for practical activity on my own part which were afforded by appeals to the faculty³ and requests to furnish opinions—occasions which not infrequently led me to recoil in terror from the application of theories that I had previously defended ; and last, but not in least part, through the moot-court,⁴ which I have held all my life, and which I regard as one of the most valuable correctives for the teacher himself against unsound theoretic views.⁵

A convert naturally exaggerates the sinfulness of his unregenerate years, and Jhering's self-accusation must be taken with more than a grain of salt. In the context of the passage just cited he instances, besides his earliest work,⁶ published in 1844, sundry treatises which he had begun to write but had left unpublished and unfinished, and his opening essay in the first volume of the *Year-Books*,⁷—a periodical which he and the Germanist von Gerber started in 1857. In this essay, as in the

¹ Scherz und Ernst, pp. 338, 339.

² Besitzwille, pp. ix, x.

³ The mediæval practice of referring cases to the law faculties continued through the middle of this century.

⁴ "*Pandectenpracticum*"—an exercise in applying Roman law to concrete cases, real or hypothetical. "Moot-court" is in so far an inexact translation as the forms of judicial procedure are not usually observed in these *Practica*.

⁵ Scherz und Ernst, *loc. cit.*

⁶ Abhandlungen aus dem römischen Recht.

⁷ *Jahrbücher für Dogmatik*—still published under the title *Jhering's Jahrbücher*.

third installment of his *Spirit of the Roman Law*,¹ which was written at nearly the same time, Jhering exalted the function of the "higher" or "productive" jurisprudence; but whether this was the same thing as the abstract jurisprudence which he began to combat three years afterwards, and whether, in his later work, he ever really abandoned the problems which he had set himself in 1857, may well be questioned. As to the unpublished treatises, we must take his word for their unpractical character; but the fact that they were not completed is an argument for Jhering as defendant, not for Jhering as *advocatus diaboli*. For the rest it may be said that his great work on the *Spirit of the Roman Law*, of which the major part was written between 1850 and 1860, does not impress a foreign reader as either abstract or unpractical; and the same may be said of his most important single contribution to "productive" jurisprudence, the theory of the negative interest of contract, which first saw the light in 1860² but was undoubtedly worked out at an earlier date. It may be added that his theory of possessory intention, set forth in his last important fulmination against "formalistic" jurisprudence in 1889, had taken preliminary form in his mind, and had been orally communicated to others, as early as 1846.³

There can be no question, however, that about 1860 Jhering became strongly convinced, as he afterwards expressed it, that

a change must take place in our Romanistic theory. . . . It must abandon the delusion that it is a system of legal mathematics, without any higher aim than a correct reckoning with conceptions.⁴

He opened his attack, in the *Confidential Letters*, with a humorous sketch of the beauties of the new jurisprudence. He proceeded to show, in the case of a young theorist just plunged into practice, the unjust and absurd results to which the logical application of accepted general principles would lead. In the

¹ Geist des römischen Rechts, Theil 2, Abth. 2 (3d ed.), pp. 357-389.

² Jahrbücher, vol. iv, p. 16 *et seq.*

³ Besitzwille, preface, p. vi.

⁴ Scherz und Ernst, pp. 341, 342.

later letters he undertook to lay bare some of the causes of the aberrations of legal science. These he found partly in the divorce of practice and theory, partly in the system of legal instruction and examinations, but principally in the custom of requiring that every aspirant to a German professorship shall legitimate himself by producing something new in the way of theory. In Romanistic jurisprudence, he explains, this is practically impossible. The grapes have been trodden for centuries. The only way to get any more wine out of the dry mass is to pour on water before pressing again, and fortify the product with alcohol and sugar.

The proportion in which these ingredients are added differs with the individual taste of the manufacturer. In most cases water preponderates. One jurist has experimented with alcohol alone; but without his observing it, a good deal of water is said to have run in with his *Spirit*.¹

This allusion to his own work, with other bits of similar self-persiflage, was of course inserted to mislead those who were seeking to identify the author of the letters. The extent to which his purpose necessitated ridicule of particular writers made the preservation of the secret seem especially desirable. He continues :

There have come into my hands, within a few days, various writings of one Dr. Asher, tutor in Heidelberg, — invaluable contributions, which, with sundry others, I shall use in one of my future letters. But I appeal to you: how can this man, in spite of the incredible ingenuity he displays, get away from the fact that Cujacius lived three centuries before him and took the best ideas off in advance? Had he been born then, and Cujacius in our time, he would very likely have been Cujacius, and Cujacius Dr. Asher. It all depends on the first chance at the press. It is all very well to say that if no new and sensible view is possible, it is better to take one already provided; but you do not understand the situation. Better a senseless view for one's self alone than a reasonable opinion in common with others.²

¹ Scherz und Ernst, p. 110.

² *Ibid.*, p. 111.

He concludes with a proposal that tutors be released from the necessity of publishing books. He finds in the Roman law a suggestion of a mode in which this reform might be brought about without ostensibly abandoning the rule. He finds there also a precedent for the lenient judgment of tutorial productions.

In Rome, as is well known, the rule existed from the time of Augustus that whoever desired to take by testament must show a certain number of children: *liberi* were the condition of *capacitas*. Persons, however, to whom the emperor was well disposed, escaped this trouble by obtaining the *ius liberorum*; the children were legally presumed or simply waived. Among others, Diana of Ephesus, who as goddess of chastity could not with propriety be held to the observance of the law, was thus invested with capacity. The importance attached in Rome to physical fruitfulness we attach to intellectual productivity: there it was "no inheritance without *liberi*"; here it is "no professorship without *libri*."¹

He therefore proposes that, as soon as law tutors indicate an intention to print,

a *ius librorum* should be granted them, *i.e.*, they should be made professors just as if they had published the necessary books. Even now, in many universities, the requirement of books is not taken very strictly: there is the same leniency in judging them which the Romans observed in the matter of children, and which is set forth in the *Digest* in a way so humane and so applicable to the question before us, that I cannot refrain from printing the whole passage.

D. 50, 16, 135. "Quaeret aliquis, si portentosum vel monstrosum vel debilem mulier ediderit vel qualem visu vel vagitu novum, non humanae figurae, sed alterius, magis animalis quam hominis, partum, an, quia enixa est, prodesse ei debeat? Et magis est, ut haec quoque parentibus prosint: *nec enim est quod eis imputetur, quae qualiter potuerunt, statutis obtemperaverunt*, neque id quod fataliter accessit, matri damnum iniungere debet."

Freely adapted to the case in point: "When tutors have done the best they can to observe the statutes of the university, why should they be held responsible because, by ill hap, the books they have brought forth are not normal literary productions but monstrosities, or exhibit such debility of mind as not to seem viable? They have

¹ Scherz und Ernst, p. 113.

at least brought something into the world, and that should be reckoned to their credit." The granting of the *ius librorum* and the professorship should of course be made conditional on an undertaking not to publish the book submitted, or at least not to publish it for a term of years, say the classical nine years — *nonum prematur in annum*. The safest course would be to commit it to the custody of the law faculty. After the lapse of nine years and the attainment of the professorship, the author would hardly insist on publication. He would probably thank God that a wise paternal government had preserved him from an over-hasty literary venture.¹

This is not only very good fooling : there is good sense back of it.

A more serious attack upon the current tendencies in German jurisprudence was made in the concluding sections of his fourth installment of the *Spirit of the Roman Law*. These contained a strong argument against "the over-valuation of the logical element in law,"² and an attempt to re-formulate the conception of a right.³ "If a right is a power of willing," he inquired, "how is it that infants and lunatics have rights?" To this the orthodox responded that "the right does not exist through the fact that volition is exercised, that a will is expressed, but through the fact that an exercise of will is permitted, that a will may be expressed."⁴ Jhering promptly seized this as an admission that, under the definition, it is the guardian and not the infant or lunatic who has the right, since it is the former whom the law "permits to will." Jhering's own definition of the right is "a legally protected interest." The interest is the "kernel"; the legal protection, by right of action, is the "shell." We speak of a right as appertaining to the infant or lunatic, and not to the guardian, because the interest is not with the latter, but with the former. So in the case of the fictitious or juristic person : the interests of an incorporated stock-company, for example, are those of the stockholders ; the conception of juristic personality in the

¹ Scherz und Ernst, pp. 113, 114.

² Geist des römischen Rechts, Theil 3, Abth. 1, pp. 308, 316.

³ *Ibid.*, pp. 317-354.

⁴ Windscheid, Pandekten, § 37, note 2.

corporation is simply a device for explaining its power to sue. The construction, according to this formula, of the "foundation," when property is held together for some religious, educational or charitable purpose, gave Jhering more trouble ; but with the courage of his convictions he here vested the interest — and therefore the right — in the public at large.

It is to be regretted that neither Jhering nor his adversaries were acquainted with the English law of trusts. They would there have found a full recognition of the element of interest for which Jhering was contending, and they would also have found that English law, in distinguishing the legal from the equitable right, has always attributed the latter to the person who has the interest, and the former to the person who has the power. They might well have ended by admitting that these two elements exist in every right, and that the two are separable. Such a termination of the controversy would have left to the adherents of the dominant theory the right to insist that the really juristic element is the power, and to Jhering the credit of having called attention to that element which German theory had previously ignored.

Although no such consensus has been attained, Jhering's arguments have had considerable influence. Some jurists have accepted his definition ; others, like Bruns,¹ have attempted to weave into the sacred Hegelian formula a recognition of the interest which underlies the right.

MUNROE SMITH.

[To be concluded in the following number.]

¹ "Die subjektiven Rechte sind die Befugnisse, die den einzelnen Subjekten dem objectiven Rechte nach zustehen. Sie bestehen im Allgemeinen in der von objectiven Rechte anerkannten und geschützten *Freiheit* der Einzelnen in Verfolgung ihrer *Lebensinteressen*." Bruns, in Holtzendorff, 3d ed., p. 352. — "Freedom" is still there ; but "will" has disappeared, and "interest" has won a footing ! Further on it appears that freedom has become freedom of action "Möglichkeit zum *Handeln*."

REVIEWS.

Feudal England: Historical Studies on the XIth and XIIth Centuries. By J. H. ROUND, M.A. London, Swan Sonnenschein & Co., 1895. — xiv, 587 pp.

Although we are accustomed to see frequent articles on Anglo-Norman history over Mr. Round's name in English quarterlies, monthlies and weeklies, it is only when such articles are massed together in a work of nearly 600 pages that we appreciate his unwearied devotion to the cause of sound historical investigation. In the work before us he has collected some of the most important of his contributions, and to these has added others which have evidently not been printed before. All of the older articles have been retouched and in some parts entirely rewritten. These studies are divided into two groups — one of territorial, the other of historical studies; and among the latter may be found the controversy *in extenso* over the battle of Hastings, with the "last word" of Mr. Round, which was denied him by the editor of the *English Historical Review*.

The subjects presented in *Feudal England* date from 1050 to 1200; and if there be one purpose running through Mr. Round's treatment of them, it is to prove that the feudal elements introduced at the Norman Conquest had a greater influence than English historians are wont to admit. This is a return toward the belief that after all the Conquest was something of a cataclysm, and that there were introduced at that time many feudal practices and customs unknown to the earlier period. The main contention is, of course, against Mr. Freeman and his view that all feudal phenomena are to be explained by reference to Anglo-Saxon institutions. Mr. Round seeks to dispel the democratic and constitutional fog that Mr. Freeman and others have cast about such words as "gemôt" and "witan" and about such characters as Godwine and Harold. We are reminded at once of the similar task undertaken by Fustel de Coulanges in *La Monarchie Franque*, where he sought, by a process of rigid interpretation of Merovingian texts, to free the political institutions of old France from all democratic vagaries, such as elective monarchies, popular assemblies and the like. We wish at times that

Mr. Round had followed M. Fustel's method of referring to his historical opponents. The latter speaks of them as "savants" "Quelques historiens modernes" or "Les érudits modernes, qui ont l'esprit dominé par l'idée préconçue de grandes libertés populaires." Mr. Round bluntly says, "Mr. Freeman."

The most important of the articles contained in this volume is reprinted from the *English Historical Review* for 1891-92, and its contents are already well known to scholars. This is "The Introduction of Knight Service into England." The thesis for which Mr. Round contends, that knight service was the outcome of William the Conqueror's enfeoffment of his followers with forfeited lands, has been very generally accepted. Professor Maitland, in his *History of English Law* (I, pp. 236-8), speaks of "Mr. Round's convincing paper," and says that "there seems to be no room for doubt that the actual scheme of apportionment which we find existing in the thirteenth and fourteenth centuries is, save in exceptional cases, the work of the Conqueror," and that "apparently he apportioned out these units in fives and tens." This disposes of the connection between the knight's fee and the five hides of the Saxon thegns. The present reprint of Mr. Round's essay contains a few additions worthy of notice. On page 259 an example is taken from Geoffrey de Mandeville to show that knight service was reckoned in multiples of five, if not of ten. On pages 269-70 new evidence has been introduced to show the existence of scutage earlier than 1156. The most important passage is as follows:

In terris meis exiguntur quinquaginta librae pro placitis, cum earundem terrarum mei homines nec in responsionem nec in facto peccaverint. Item pro militibus sexaginta librae quos [quas?] tanto difficilius cogor reddere quanto annis praeteritis mea substantia gravius attenuata est.

The writer of this, Herbert, Bishop of Durham, died in 1119; and thus the beginnings of commutation of military service can be carried back forty years. On page 291 is introduced an additional instance of the use of the number 60,000, which, as applied to the number of knights, is but a mediæval exaggeration. On page 297 evidence is taken from the Ramsey cartulary to show that enfeoffment can be traced back to 1166. This point, as Mr. Round recognizes, is not clearly made out, but is interesting as showing the value of the cartularies for institutional history. On pages 300-301 reference is made to the list of the knights of the Archbishop of Canterbury (taken from the Christ Church Domesday, 8th Report on Historical

MSS.) to show that in all probability knight service can be carried back of 1166 nearly to 1086.

Second in importance to the article on knight service is the series of studies on "Domesday Book." These essays, taken in conjunction with the two papers printed in *Domesday Studies* (1888-1891), rank Mr. Round as among the first, if not the first, of living Domesday scholars. Passing by the discussion of "sokemen," which is the first subject treated, and upon which we want more light, a word may be said regarding Mr. Round's discussion of the "hide;" for here we hit upon results of a somewhat revolutionary character. The Domesday "hide," that most vexing subject of antiquarian research, he declares to have been invariably composed of four Domesday virgates, or one hundred and twenty Domesday acres; but inasmuch as the Domesday "hide" was only a unit of assessment and not of area or value, this means, as Mr. Round abundantly proves, that the Domesday commissioners employed a system of artificial hidation, in which the measure of assessment was the "hide," composed of four (geld) virgates and one hundred and twenty (geld) acres, and that this hide bore no ratio to area or value in either a vill or a manor. This conclusion is reached as the result of elaborate mathematical calculations, in which it appears that the hundred was employed as the unit of assessment, and that the amount was divided by fives and tens among the vills.¹ This would make the hundred a fiscal unit (as it was for Danegeld, in some instances at least), and a certain amount would be assessed upon it as a whole. This amount would be collected through the ordinary machinery of the hundred; and, if I understand Mr. Round aright, he would imply that the Conqueror left to the hundred court the apportionment of the assessment among the vills. If this be so, then the assessment of the vills and manors was subsequent to that of the hundred and was arrived at by a process of division and subdivision; and it would follow that Domesday hidation was not based upon either the actual area or the geldable value of land. Therefore any attempt to discover and establish the relation that assessment bore to area is vain. This conclusion certainly simplifies the Domesday problem. Moreover, if accepted, it would take away from the village community its supposed function as a unit of geld assessment, and would make the village, in this respect at least, subordinate to the hundred.

¹ Since the above was written, Mr. Round has printed an additional bit of evidence from the cartulary of St. John's Abbey, Colchester. *English Hist. Rev.*, Oct. 1895.

Thus another argument for the existence of the "tūngemōt" would be left without foundation.

Regarding the origin of the five-hide unit Mr. Round speaks with hesitation, but he is convinced that it is old and that it was derived from neither the Roman nor the British system. He is inclined to connect it with the origin of the hundred. "It seems to me to be at least possible, that the district originally representing a hundred . . . was reckoned as so many multiples of five or ten hides, and that this aggregate was subsequently distributed by its community among themselves" (p. 97). This, as bearing on the controverted question of the origin of the hundred, is worthy of careful consideration.

It is impossible to discuss here the many results of Mr. Round's study. Everything that he says carries weight, and through his efforts we are gradually beginning to know more exactly what Anglo-Norman institutions actually were. In his paper on "The Alleged Debate on Danegeld" he concludes that the payment dispute was not Danegeld at all, but the *auxilium vicecomitis*, which Dr. Stubbs defines as "a payment made to the sheriff for his services." As this was a local levy, it would be interesting to know more exactly what it was, and how it was apportioned among the tenantry. The last of Mr. Round's points that I shall mention is that the first fine imposed by the king and his justices can be carried back certainly to 1175, and probably originated between 1166 and 1171. The date previously accepted, that of Professor Maitland, is 1179.

CHARLES M. ANDREWS

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A Student's Manual of English Constitutional History.

DUDLEY JULIUS MEDLEY. Oxford, B. H. Blackwell, 1894. 583 pp.

Within the past few years the apparatus for teaching English history has been greatly improved. A number of excellent manuals for the use of schools have appeared, each reflecting in its way the results of the highest scholarship. One of the best examples of books of this kind is the volume before us. It covers the entire subject within convenient space and in a style thoroughly commendable. Not often does one find a book packed so full of facts and judicious deductions therefrom. Not a line, scarcely a word, is wasted. Every page is filled with well classified material. If in point of style it has any serious fault, it is excessive condensation; occasionally transitions of thought are not clear and too much is left to be supplied by the reader. For example, on page 310, the author

states that it is possible to account for the growth of private jurisdictions in England in two ways: the first, *viz.*, the grant of privileges on the creation of estates in bocland, is clearly explained, but one may have to look repeatedly to see what the alternative method was. However, the book is one not simply to be read, but to be studied.

The material for the volume has, of course, been drawn mainly from the standard writers. In all that relates to the middle ages Stubbs has been used with great freedom, but not slavishly. Rarely will one have to go beyond the *Select Charters* to find the original authorities referred to, while the student will welcome here the appearance in compendious form of the views presented at length in the *Constitutional History*. The influence of Dr. Gneist is also clearly visible, and proper recognition is given to the work of later investigators. The dispute between the Romanists and Teutonists as to the origin of the English people has been left undecided. The probable justification of Spelman's distinction between bocland and folkland, as revived by Vinogradoff, is acknowledged. The possible significance of the theory recently advanced by Professor Maitland and Mr. Round, that freeholders as such did not attend the shire court, is recognized. Space is found for the discussions of the economists concerning the manor. This shows that the author regards his subject as progressive, and invites the student to the formation of independent judgments. The development in modern times of the land system, of the cabinet, of Parliament, of the military and fiscal systems, of the church, of guarantees for the liberty of the subject, finds in each case appropriate treatment. Still, as the subject demands, the larger part of the book is occupied with the mediæval constitution.

In harmony with the severely juristic spirit of the book is the author's choice of the topical rather than the chronological order of treatment. Like May, he isolates the parts of the constitution, and traces the development of each throughout its entire course with but slight reference to its relations at any given time to the organism as a whole. From the historical standpoint this is a serious fault. It results in the production of a handy book of reference — a dictionary or cyclopedia, it may be; but one will resort in vain to a book so constructed for a view of growth of the English constitution. The parts are there, but the way in which they are combined, or the effect of changes in the combination, does not appear.

H. L. OSGOOD.

Medieval Europe, 814-1300. By EPHRAIM EMERTON, P
Boston, Ginn & Co., 1894. — xxv, 607 pp.

"The present volume," writes Professor Emerton, "owes its origin to repeated requests, coming from widely scattered and widely different sources, that I would go on with the history of continental Europe from the point where it was left at the close of a little book published in the year 1888." Like the earlier work, the *Introduction to the Middle Ages*, this is intended for the use of college students in the earlier classes. Thus from the beginning it should be clearly understood that Professor Emerton does not claim that his work is the result of original investigation. It is in fact midway between what the French call *un livre de vulgarisation* and an ordinary college text-book. The period covered by it extends from the death of Charlemagne to approximately the end of the thirteenth century.

The characteristic that gives unity to this period, Professor Emerton finds in the "absorption of the individual into the corporation." He maintains that the individual in this period is merged in the corporation — that he sinks "his own personality in some form of corporate life." That there is some truth in this contention cannot be denied, but the point of view seems to me to be narrow and even unscientific. A period should not be characterized by a less movement which is merely the concomitant reaction against a greater. The ancient state allowed no scope to the individual. The conception of a conflict between state and individual was wholly foreign to the ancient mind. The result of the Teutonic tidal wave was the total subversion of this state of affairs. As Laurent says: "Dans les républiques de l'antiquité . . . la véritable liberté n'existe pas, parce que les droits individuels étaient sacrifiés au pouvoir de la société. . . . Les Germains apportèrent dans le monde le principe de l'individualité méconnu par les anciens." From the "too much government" of ancient times the scene shifts to "the too little government" of feudal times.

The characteristic of a society organized on the feudal system is total decentralization — in fact, anarchy. As civilization advanced and as commerce sprang up, some means had to be devised to check the license of the individual. The church found an instrument in the *pax et treuga Dei*. The burghers organized themselves in guilds, in the strong municipalities, and in Spain in the *Hermandades* to withstand the plundering of the baron. Thus the period treats

by Professor Emerton is characterized by the extreme individualism of feudal society, and by concomitant attempts through union to put a stop to the evils resulting from such a social organization. What the king was powerless to do, the church and the burghers attempted. The rise of the centralized absolute monarchies does away with the necessity of such attempts, and the mediæval corporations, both municipal and commercial, lose their vitality in losing their *raison d'être*.

The book is not what the title and preface indicate — a history of continental Europe during the period marked out. On close examination it is found to be a history of the relations of Italy and Germany, with an appendix consisting of the last six chapters, which treat of "The Crusades," "The Growth of the French Monarchy," "The Intellectual Life," "The Feudal Institutions," "The Organization of the Middle and Lower Classes" and "The Ecclesiastical System." Thus the work is not organic; it has no unity, and from the literary standpoint it is decidedly unsymmetrical. In this respect it furnishes a marked contrast to Professor G. B. Adams's work.

The account of the relations of Italy and Germany during the middle ages, written in a clear but occasionally colloquial style is, so far as I have seen, the best and most useful work in English on the subject. It is not so philosophical as Bryce, but is much more complete, and for the average student far more satisfactory. It embodies the best results of German investigation, and is withal fresh and animated. As a text-book, as a readable book for the layman, and even as a work of reference for the scholar, this part, and it is by far the major part of the book, deserves high praise.

As to the chapters that have been called the appendix, the author's dependence on secondary authorities has been so immediate as to relieve the reviewer from the necessity of further comment. Thus the chapter on "Feudal Institutions" is mainly a condensation from Luchaire's *Manuel des Institutions Françaises*; and there is an obvious indebtedness to the same work in the chapters on the French monarchy and on the organization of the middle and lower classes. While Professor Emerton's plan excludes the detailed citation of authorities in cases like this, the bibliography with which each chapter is introduced affords every convenience to the reader for verifying the statements of the text, and for pursuing further the study of the topics treated.

GEORGE LOUIS BEER.

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A History of Spain. From the Earliest Times to the Death of Ferdinand the Catholic. By ULICK RALPH BURKE, M.A. London and New York, Longmans, Green & Co., 1895. — 2 vols.: 1 384; viii, 360 pp.

A good general history of Spain in the middle ages has long been needed. The work of Dunham, excellent in its day, has for many years been out of date: and, so far as I know, the results of the epoch-making researches of Dozy have not hitherto been generally accessible to the English reader. This deficiency in our historical literature Mr. Burke has made a serious and scholarly, and on the whole a successful, attempt to supply.

The two chief shortcomings of the work are the inadequate treatment of political institutions and the failure to make fuller use of the work of German scholars on the different periods. Dozy and Gayangos have been the author's guides for the Moorish history, as they are, of course, indispensable; but he could hardly have failed to derive much of value from August Müller's *Der Islam im Morgen- und Abendland*. Mr. Burke's treatment of the Moorish civilization in Spain and the part it played in the education of Europe is too brief. From Müller's *Islam*, Haeser's *Lehrbuch der Geschichte der Medizin*, and Gröber's *Grundriss der Romanischen Philologie*, precise illustrations of the service rendered by Arabic science to European culture could have been obtained, and definite facts could thus have been substituted for the vague generalities with which the English reader has usually to be content. To the different phases of the more pure Spanish civilization Mr. Burke has devoted several very interesting dissertations, — architecture, music, literature and amusements — all coming in for generous treatment.

The arrangement of the volumes is partly topical and partly chronological, and the narrative becomes detailed only with the period of Ferdinand and Isabella, which occupies about two-sevenths of the whole. The author approached his subject in a spirit that was manifestly honest and judicial, and he apparently spared no pains to get at the facts. The untimely death of Mr. Burke last summer deprives us of the hope that his work would be continued to cover the reigns of Charles V and Philip II. It is, however, much to be hoped that the success of the volumes that have already appeared will stimulate the publishers to issue a cheaper edition.

EDWARD G. BOURNE.

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La Diplomatie Française et la Ligue des Neutres de 1780 (1776-1783). Par PAUL FAUCHILLE. Paris, G. Pedone-Lauriel, 1893. — 619 pp.

This work possesses a double interest for American readers. In the first place, it relates to one of the important European developments of our Revolutionary struggle; and, in the second place, it throws new light on the diplomatic labors of the minister of foreign affairs to Louis XVI, Count Vergennes, a statesman whose influence was potent in bringing that monarch into the American alliance. The chief value of the work lies in the fact that it embodies the results of original research. It discloses from the inside the history of the armed neutrality, as that history may be traced in the archives of France, Russia and Sweden.

The result of M. Fauchille's investigations is to discredit the current supposition that the idea of the neutral alliance was first suggested by Count Panin. The credit of that suggestion he gives to Vergennes, who, from the moment France determined to take part in the American war, sought to combine the neutral powers for the purpose of resisting the pretensions of England in respect of belligerent rights. In order to trace the development of the neutral league, M. Fauchille carefully follows the thread of the negotiations in the correspondence of Vergennes with the French diplomatic agents at the Hague, Berlin, Madrid, Copenhagen, Stockholm and St. Petersburg. When M. de Corberon, the French *chargé d'affaires* in Russia, in October, 1778, first cautiously suggested to Count Panin the idea of a league of the Northern powers for the purpose of resisting British pretensions, the count, who was disposed to take measures against American privateers, exhibited great reserve. Two months later he made an official report in which he argued that Russia had little interest in the general subject of neutral rights, and submitted the curious suggestion that Russia should extend protection to neutral vessels bound to her ports, but not to those departing from them. The ground for this suggestion was that it was the interest of Russia to protect vessels coming to buy her merchandise, but that it did not concern her what became of it afterwards — whether an Englishman or an American got it. Subsequently the Empress Catherine II proposed to Sweden and Denmark a joint declaration which, far from betraying the liberal ideas of the armed neutrality, seemed capable of meaning that the commerce of the North Sea was under the exclusive control of those three powers.

Against these adverse inclinations Vergennes, with his habits of patience and tact, pertinaciously labored. He invoked the aid of Prussia ; but he found his principal opportunity in the employment of good offices to effect a peace between Russia and Turkey. Under the influence of gratitude, Russia readily adopted the suggestion of Vergennes that the declaration previously made was intended to apply only to territorial waters ; and the freedom of the North Sea having thus been recognized, the way was left open for the great diplomatic contest which resulted in the Russian declaration of 1780, and the subsequent league of the neutral powers, commonly known as the armed neutrality.

M. Fauchille traces the development of these events step by step through the pages of the diplomatic correspondence ; and he is entitled to the praise of having made a valuable contribution to the history of an interesting and important transaction.

J. B. MOORE.

The Constitutional Antiquities of Sparta and Athens. By

DR. GUSTAV GILBERT ; translated by E. J. BROOKS, M.A., and T. NICKLIN, M.A. ; with an introductory note by J. E. SANDY. Litt.D. New York, Macmillan & Co., 1895. — 463 pp.

The Political Institutions of the Ancient Greeks. By BASIL L. HAMMOND. New York, Macmillan & Co., 1895. — 122 pp.

These two books, and in particular the first, should receive hearty welcome, not alone from classical scholars, but from all who are interested in studying the development of political institutions.

Among the books that treat of the constitutional antiquities of Greece one of the best is Dr. Gustav Gilbert's *Handbuch der Griechischen Staatsalterthümer*, in two volumes, of which the first is devoted exclusively to the constitutions of Sparta and Athens. In the second edition of the work, published in 1893, this important first volume has been materially improved by careful revision, in which Dr. Gilbert has availed himself of the results of the most recent investigations and especially of the discovery of Aristotle's *Ἀθηναίων Πολιτεία*. The value of this treatise, which he rightly considers to have been the work either of Aristotle himself or of one of his pupils working under his immediate supervision, is carefully and distinctly set forth in a special introduction, which forms an interesting and important addition to the body of literature upon the subject.

In his discussion of the constitutions of Sparta and Athens Dr. Gilbert begins in each instance with a short account of the historical development of the constitution. He then proceeds with a detailed description of the different elements of the population, the administrative officers and their powers, military matters, finance, the judicature and so on, and concludes with a sketch of the leagues or confederations over which Athens and Sparta respectively presided. One of the most valuable features of the book consists in the copious and exhaustive references to the ancient authorities, both literary and epigraphical, which with numerous citations we find in the notes. This arrangement renders it easy for the student to test the validity of the author's conclusions by examining for himself the evidence for each individual point. The references to modern authorities, though ample, are somewhat less numerous, since Dr. Gilbert has wisely confined himself to those which are best and most accessible.

This first volume of the *Handbuch*, of which the general scope and the value are too well known to require more extended criticism at present, now makes its appearance for the first time in English dress. The work of the translators has been performed with good judgment and a praiseworthy regard for the differences of idiom between the two languages, so that the result is in the main very satisfactory. It is, therefore, the more to be regretted that the volume is marred by a number of minor errors, which, it would seem, might have been eliminated by the exercise of a little greater care. Mistakes in accentuation, such as *ταμίας* for *ταμίας* on page 202, or *ἐάν* for *ἐάν* in note 4, page 215, although blemishes, can scarcely be held to impair the usefulness or value of the book; but the same cannot be said of such errors as the following: page 6, note 2, — Boeckh, *Kl. Schr.*, 6, 23 for 6, 63; page 59, note 3, — Hdt. 6, 67 for 6, 57; page 96, note 3, — Dem. 19, 361 for 19, 261; page 103, note 3, — C. I. G., 378-9 for 3078-9. On page 242 the year in which the treasures of the other gods were placed with those of Athena in the Opisthodomos of the Parthenon is given as 453-4 instead of 435-4, an error that occurs also in the German edition.

Another matter, which can hardly be passed by without a word of protest, is the method — or rather utter lack of method — which the translators have shown in their transliteration of the Greek proper names. However much individual opinion may differ as to the proper system to be observed in this matter, it is surely not too much to ask that each person shall adopt a definite method and

adhere to this with some degree of consistency. This Messrs Brooks and Nicklin have not done, and with the usual absurd result. Thus on page xxvi *Peisistratos* and *Herodotus* stand almost side by side; and on page xlvii we are confronted by *Thoukydides*, although elsewhere the form *Thucydides* is employed. On page 19, again, we find *Terpandros*, but on page 22 *Lysander*; on page 45 *Lacedæmonian*, but a few lines further on *Lacedaimon*; and similarly in no. 1, page 68, *Polyas* is immediately followed by *Adrian*.

In this regard a pleasing contrast is offered by Mr. Hammond's little book upon *Greek Political Institutions*; and the author is to be congratulated on the rational course that he has followed. The work, as Mr. Hammond states in his preface, is not to be regarded as a whole in itself, but rather as the first volume of a work upon comparative politics. It contains in amplified form the first portion of a course of lectures which he delivered upon European political institutions in general.

After a brief survey of the Aryan races down to the time of the division into the two groups of Europeans and Asiatics, he proceeds to classify the various European political bodies. His primary classes are (1) the political community,—by which he means a number of persons living under one government and having many interests in common; and (2) the political aggregate or heterogeneous empire,—terms which he applies to those living under one government, but with few or no common interests. The first class he subdivides into tribes, cities, either expansive or inexpansive, and nations, either unitary or federal. Having thus prepared the way, he begins his discussion of Greek political institutions with an account of the tribes and the tribal governments of the heroic age. The Spartans and the Spartan constitution are next considered in a separate chapter; and the various forms of government in the other Greek states from the seventh century to the conquest of Greece by Macedonia are then treated in detail. After a brief discussion of Aristotle's classification of politics, which partakes more or less of the nature of a digression, the author concludes his work with an account of the Achaean league—"the first example in history of a well-organized federal state." The general scope of the book, therefore, is such as to render it less valuable to the classical scholar than to the student of politics, for whom it is primarily intended. Mr. Hammond has been successful in compressing a large body of facts into a comparatively small compass, and in presenting them in an interesting manner. In some few points he is possibly rather dog-

matic, as, for example, in his refusal to accept as genuine the Draconian chapter of Aristotle's 'Αθηναίων Πολιτεία; but in the main he appears to have weighed the evidence carefully before forming his conclusions. More extended use than he seems to have made of the work of German scholars would perhaps have been advisable, and more frequent reference to his authorities would have greatly enhanced the value of the book.

CLARENCE H. YOUNG.

COLUMBIA COLLEGE.

The American Commonwealth. By JAMES BRYCE. Third edition, completely revised throughout, with additional chapters. New York and London, Macmillan & Co., 1895. — 2 vols.: xix, 724; vii, 904 pp.

In calling attention to the appearance of a third edition of so well known a work as Mr. Bryce's, it is obviously a reviewer's duty to confine himself to brief comment upon such changes as the author has thought fit to introduce. Mr. Bryce's book needs no further eulogy, and the fact that a third edition has been called for shows that American readers need little further exhortation to study with care one of the most important contributions to political science made by any publicist in recent years. One comment of a general character may, however, be permitted. Although the four new chapters that swell the second volume are excellent in themselves and were necessary to give unity to the whole work, it is to be hoped that the present limits of the two portly volumes will not be extended. Even now it is doubtful whether the admirable thoroughness of the attention given to details does not tend to obscure for the ordinary reader that even more admirable philosophical treatment of his subject which never fails Mr. Bryce. That the author himself is, however, aware of the dangers of undue expansion, seems to be proved by the fact that he has gained space by sundry omissions, chiefly in the notes and appendices.

It is only the second volume that has gained in number of pages over its counterpart of the second edition; but this increase (140) must be discounted, owing to the fact that the new pages are one line short of the old. While the first volumes seem to a casual observer to be exactly alike in chapters and pages, a closer examination shows careful revision throughout the latest edition. Space has been gained by a wise abridgment of the constitution of California given in the appendix; and Mr. Bryce has been able not

merely to bring his facts up to date, but also to prove how thoroughly he keeps posted on American affairs and on everything written about them. I have noted scarcely an omission of consequence in his bibliography, unless it be that in his chapter on "The Courts and the Constitution" he makes no reference to the late Brinton Coxe's valuable treatise, *Judicial Power and Unconstitutional Legislation*. The minuteness of the revision is well illustrated by the fact that he now omits the statement that a person who fought on the Confederate side would be an inexpedient candidate for the presidency; but the note on "gerrymander" (page 124) is still misleading as to Gerry's attitude toward the scheme to which his name has since been attached. We may now, however, pass to a brief consideration of the four new chapters, with the remark that in addition to making his book more accurate as a work of reference, the learned author has rendered such reference easier by improving his index.

The additional chapters, which all belong to Part V, are entitled respectively "The Tammany Ring in New York City," "The Home of the Nation," "The South Since the War" and "Present and Future of the Negro." The first is a model of condensed exposition; and the vividness with which Tweed and his associates stand out after a few broad strokes of characterization is a striking proof that Mr. Bryce's powers of narration are of distinguished quality from the purely literary point of view. Naturally he was able to insert only a short note on the defeat of Tammany in 1894, but this note closes with a wise and salutary warning. The second chapter is as interesting and philosophical as anything its author has given us, but the topics it opens are too broad to be discussed here. The chapters on the South and the Negro also open a field that is too wide for adequate review in this place; but as a Southern man I cannot refrain from thanking Mr. Bryce for them and commenting on them briefly.

I have nowhere seen the balance held more firmly and fairly than in the pages in which the legislation of the Reconstruction period is discussed; nor have I seen the subsequent political attitude of the South more calmly and equitably examined. While he is not blind to the evil results of slavery, Mr. Bryce sees clearly that there is now no more loyal section than the South — none that has fronted the past and is fronting the future with more faith and courage, in spite of overwhelming difficulties. In view of this sympathetic treatment of Southern conditions, Southern men should and will be glad to listen to what Mr. Bryce has to say about the dangers resulting from

the predominance for a long period of one political party and from the corrupting methods taken to maintain this predominance. He would, perhaps, have been able to accentuate the moral he teaches as to this latter particular, had he called attention to the fact that one of the most notorious cases of ballot-box stuffing on record occurred about two years ago in a primary election held by the Republican Party in one of the few Southern districts that always give that party a majority of votes.

But it is to Mr. Bryce's views on the so-called negro problem that one naturally turns with most interest. They are on the whole fair and conservative. That they are cautiously expressed was to be expected of our author; that they are not specially illuminating was to be expected from the complex nature of the problem. Mr. Bryce sees that while the political condition of the negroes may change materially for the better in fifty years, their social condition can only be slowly improved by changes of sentiment on the part of the dominant race that cannot be effected by legislation or by interference from without. He seems fully to comprehend the feeling of the whites that their political and social supremacy must be maintained at all costs and the purity of their stock be preserved from contamination. This comprehension of the basal fact in Southern conditions is due to our author's wisdom in visiting and studying the people and the section before writing about them. If his studies have not brought him much more light than has yet come to thoughtful Southerners, they have at least kept him from making rash generalizations and have taught him that the problem must be worked out by the people whom it most concerns. On the whole, then, Mr. Bryce's views on the negro question do not materially differ from those held by Southern students who have learned to emancipate themselves from prejudice and to confront with impartiality the grave problems involved. On one distressing feature of the situation he does not, however, dwell with sufficient emphasis. This is the practical abandonment of large sections of arable land in certain states to a class of small negro proprietors, who from all accounts are retrograding in their methods of cultivation and their standard of comfort. This segregating and decivilizing tendency of part of the race counterbalances much of the improvement made along industrial lines, and introduces into the problem a territorial element that complicates it greatly. More than one Southerner of an historical turn of mind has asked himself whether many features of decadent Roman agriculture may not be repro-

duced in the South, corporations taking the place of individual proprietors. But where Mr. Bryce is cautious of treading, it will never do for his reviewer to rush in.

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The American Congress. A History of National Legislation and Political Events, 1774-1895. By JOSEPH WEST MOORE. New York, Harper & Brothers, 1895. — xii, 581 pp.

The chief title of this book leads one to expect a history of the formation and development of Congress, but the sub-title is more nearly descriptive of the contents and scope of the volume. It is a political history of the United States, giving the most important events, occasionally interlarded with excerpts from speeches or with well-worn anecdotes, — some of them, I fear, apocryphal, — and now and again devoting space to the *personnel* of Congress or to brief biographical sketches. There are some indications that good books and a modicum of original matter have been used, and the work is not marred by many serious inaccuracies. The style is clear, simple and straightforward. One seeking for a brief popular account of political deeds and misdeeds, from the Stamp Act Congress to the syndicate bond issue, will find this book on the whole the best that has been written in anything like the same compass.

Yet it is neither a history of Congress nor a history of politics in the United States. Were it the former, we should find an account of the origin, growth and influence of the committee system, the change in the Senate from a *quasi* privy council to a full-fledged upper chamber, the relations between the two houses and how they have come to hold their places and to work together; we should, beyond doubt, find also some study of the development of the speaker's office — one of the most noteworthy facts in our history. But the book is nearly silent on all these subjects. There is no mention of the influence of Henry Clay in exalting the powers of his position, and one might well believe that the functions and authority of Frederick A. Muhlenberg were not far different from those of Thomas B. Reed. In other words, this volume is in no true sense a history of Congress. There are occasionally good descriptions of great days in the arena of debate, as when Hayne contended with Webster, or when Douglas, Seward and Sumner struggled over slavery in the territories.

At times there are quotations that might better have been omitted. The Congressional Globe is dangerous ground for the unwary toiler who is not seeking out the course of legislation, but is looking for examples of oratory. He is almost sure to bring up a good deal of mud with his pearls. So here we have a page and more devoted to Lincoln's "coat-tail speech," which is said to have gained "considerable reputation." Few of Mr. Moore's readers ever heard of it before, and they were so much the better off. This early effort of Lincoln's shows him fresh from the mire of Illinois politics; it illustrates nothing in the history of Congress, and standing alone means nothing in the history of Lincoln. We are also treated to the details of the quarrel between Blaine and Conkling, — a quarrel, indeed, which had no slight effect upon our history. But when we read so much congressional billingsgate in the morning papers, it hardly seems necessary to reproduce in a book the masterpiece of scurrility which this incident called forth.

Were this book a history of American politics we should find in its five hundred pages some adequate, suggestive account of the origin of political parties, and their transmutations; but such questions have not awakened the writer's interest. His account of the formation of the Federalist and the old Republican parties leads one to think that the author is not quite sure of his ground. He makes no pretense anywhere of looking below the surface, but here it is doubtful if he examined even the surface with care. To the reorganization of parties in the administration of the younger Adams is devoted but one short paragraph. The Know-Nothings get off with eleven lines. The beginnings of the Republican Party are not more extensively treated. It is not my intention to chide Mr. Moore for laches in this particular, but simply to state what his book does not contain which one might expect to find there.

I have said that the book is not marred by serious inaccuracies. Perhaps all blunders are serious; but the general reader, for whom the book is professedly written, will not be misled as to the main course of events, and will not find any very important fact misstated. This is faint praise indeed; but one cannot conscientiously say more. A few examples will illustrate my meaning. On page 9 we are told that in 1763 "England received from France and Spain all their possessions in America except the western part of the province of Louisiana." Doubtless no intelligent reader will be misled into believing that. On page 84 the year of Hamilton's birth appears as 1751 — probably careless proof-reading. We are told that "General

Hull ingloriously surrendered the important post of Detroit, on the northern frontier, under circumstances which showed he was a traitor to his country." Nobody believes that now. Even the prejudiced court-martial, presided over by a general whose own failings had contributed to Hull's difficulties, did not dare to declare that the poor old man was worse than neglectful and cowardly. Again, we are told in all seriousness, as a very comfortable conclusion of the war of 1812, that England "had also found that the American army and navy were more than a match for her forces." Possibly such redundant patriotism has its place, but not in a real history. A curious and interesting form of error appears in the account of the Philadelphia convention. According to Mr. Moore, some conservative delegate suggested that it would be well to adopt "a plan composed of palliatives and half-measures. When Washington heard this injudicious suggestion he left the president's chair and spoke earnestly against it. During this speech he uttered these memorable words." Here follow the words which Gouverneur Morris put into Washington's mouth in a eulogy pronounced upon him in later years. Now as everybody knows, Madison declares in his notes that the president spoke but once, and then concerning the ratio of representation. If Washington ever used the words attributed to him, it was before the meeting of the convention; and, in fact, Morris's account is quite consistent with such a theory. This error is interesting because it illustrates the longevity and vitality of an attractive falsehood. Bancroft gave the story currency in his *History of the Constitution*, but asserted that the words were used just before there were enough delegates present to form a quorum. Mr. Fiske repeated the incident in his *Critical Period*, adding many imposing extras. Now Mr. Moore has given cause and occasion. We need not be surprised if the anecdote leads a thrifty and prosperous life for many decades to come.

It is not the purpose of this review to denounce Mr. Moore's book. Its title is misleading; it is not strictly accurate on minor matters; it does not always distinguish the important from the trivial; there is no pretense of profundity, no effort to give political events in perspective, no appreciation of causes. But with all its evident failings as a mere narrative history the book is not unsuccessful. It is readable and interesting, and its blunders are harmless. It may find its way into the hands of those who would not read a more scholarly or profound work.

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Le Gouvernement Local de l'Angleterre. Par MAURICE VAUTHIER. Paris, Arthur Rousseau, 1895. — xii, 446 pp.

L'Administration Locale de l'Angleterre. Par PIERRE ARMINJON, Docteur en Droit. Paris, Chevalier-Marescq et Cie., 1895. — 345 pp.

It is now two centuries since England solved for Europe one of the most important problems of Western civilization, *viz.*, how to secure at the same time civil liberty and orderly government. Naturally she did not solve this problem without a struggle. Indeed, the solution caused so much disturbance that her continental neighbors, who had very generally sacrificed civil liberty in order to avoid anarchy, were accustomed to regard her in her period of turmoil in much the same light as that in which France, since 1789, has been regarded by the rest of the Western world until within the last few years. When the battle was won, however, the solution of the problem which England had reached was very generally — indeed, it might almost be said universally — adopted. But with one exception the publicists of continental Europe sought and found the reasons of England's success in the mere relations of Parliament and crown, ignoring the broad basis of local self-government which had been laid in the days of the Norman and Plantagenet kings. The one exception was the late Professor Gneist, of Berlin. He it was who opened the eyes of European publicists to the importance of the local institutions in the English constitutional system. Now that England is attempting for social reform what she at one time accomplished for political reform, the eyes of continental Europe are again being directed towards her. But unlike the political philosophers of the seventeenth century, the observers of the present time are directing their attention to English local institutions. The reason is apparent. Almost all the successful social reforms of the present day in England are due to the activity of local rather than central authorities. The central government has, it is true, stepped in to forbid many actions on the part of individuals which it regards as detrimental to the public welfare; but almost all positive action on the part of the government in the direction of ameliorating the lot of the less fortunate classes of the population is being undertaken by the various local public corporations.

The appreciation of this fact is what gives peculiar value to the work of M. Vauthier. He has grasped the social importance of the late changes in English local government in a way which, while per-

haps not impossible for an Englishman, is hardly to be looked for in one who has lived so near the movement which has been going on for the past quarter of a century. Certainly M. Vauthier's attitude towards local-government reform in England is not that of those persons — generally barristers — who have hurriedly thrown together books on the county, parish and district councils formed by the acts of 1888 and 1894 — the only literature in English on the subject M. Vauthier is, however, himself a lawyer and, while writing of the recent interesting reforms with the breadth of view of the political scientist, has all the lawyer's desire for accuracy in his statement regarding English law. His book is peculiar in that, though written by a foreigner trained in a system of public law quite alien to that of England, it contains so few mistakes. The only one to which attention need be directed is on page 339: and this is not of great importance; indeed, it is a fault not so much of commission as of omission. In commenting on the private-improvement rates he makes no reference to the American system of assessments for local improvement, though the adoption of this system, under the name of the betterment tax, has become a very important question, particularly in the great metropolitan district of London.

Finally it is to be noticed that M. Vauthier is one of those who believe that the present can be understood only in the light of the past. A large part of his book is devoted to the history of English local institutions. While he does not seem to have added very much to the sum of our knowledge in this field; while in some instances particularly in what he says about the origin and development of the jury, he might have made further use of the results of German and even of American investigation: still it is seldom that we find the history of English local government told so concisely, and at the same time so accurately and in so entertaining a manner.

While the striking feature of M. Vauthier's work is the author's appreciation of social conditions and tendencies in England, Dr Arminjon's book is more noticeable from the legal point of view, and particularly from the point of view of comparative law. His references in the footnotes to the statutes, so many of which have been recently passed making changes in the local-government system, are very full, and almost all his statements seem to be correct. One mistake, which is probably typographical, is found, however, on page 84, where the date of the union of the poor-law board and the public-health board is given as 1831 instead of 1871. Again, on page 144, the "assises" are spoken of instead of the quarter sessions.

The great merit of this book is to be found in the author's grasp of the fundamental principle of English law relative to local powers, *viz.*, that they are enumerated in the law, with the necessary result of a large amount of special legislation. The appreciation of this principle is the more remarkable from the fact that, as a Frenchman, Dr. Arminjon can hardly be expected to be familiar with English institutions; and the system with which, as a Frenchman, he is familiar is based on general grants of local power subject to specific limitations.

Another great merit in Dr. Arminjon's book is to be found in the full and accurate description of the most salient feature of the modern development of English local government, *viz.*, the central administrative control exercised over the local bodies. This is a feature which many writers on English local government pass by altogether, or treat quite inadequately. Nowhere else has this matter been so fully or so satisfactorily set forth. His treatment of this control not only considers its legal aspects, but also includes a description of its practical workings, which, owing to the assistance given to the author by a number of English officials, is of the greatest value to all who are interested in local reform.

It is seldom that two books on the same subject, appearing almost simultaneously, duplicate each other so little as the two before us. No one who is interested in the subject should fail to read them both.

FRANK J. GOODNOW.

Études sur la Compétence Civile à l'égard des États Étrangers et de leurs Agents Politiques, Diplomatiques ou Consulaires. Par P. DE PAEPE. Brussels, Émile Bruylant, 1894.— 302 pp.

M. de Paepe is an advocate of the supremacy of the civil law over all persons and all things within the territorial jurisdiction. He maintains that foreign states and their agents should be subject to the jurisdiction of the civil tribunals. From this claim he excludes matters of a political nature, and he does not advocate the subjection of diplomatic agents to the criminal law. But he contends that foreign states and their representatives should not be exempt from judicial process in matters of civil contract or of civil obligation. In the course of his argument, he presents a large number of interesting precedents; but many of these are, as he perceives, adverse to his thesis, for which he finds more support in the ancient than in the modern jurisprudence. He thinks, however, that some of the

modern cases have proceeded on erroneous grounds, and he condemns, to a great extent justly, the fiction of extraterritoriality as a basis of decision.

But while admitting that errors have been committed, it may be suggested that M. de Paepe has overestimated the injury to social order that results from the exemption of foreign states and their representatives from the civil jurisdiction. Take, for example, the case of diplomatic representatives. If the number of such representatives in any one country were large and their contracts were numerous and extensive, the question of civil jurisdiction might assume a practical importance. In reality, however, its practical importance is slight. On the other hand, so great has been the importance attached to the freedom and independence of diplomatic agents, that governments like those of Great Britain and the United States, which most strenuously assert the supremacy of the territorial jurisdiction, have been among the most liberal in securing immunity to such agents.

M. de Paepe truly says that social order cannot exist without territorial civil law. There is, however, a *jus publicum*, which is within a domain as essential to social order as the *jus civile*; and in matters that affect the relations of independent states the *jus publicum* has as its rules the precise object of which is to prevent the conflicts which would arise from each state's endeavoring to settle matters in its own way. Let us suppose that a citizen of a certain country has a claim against a foreign government. Would it be promotive of social interests for the courts of such country, finding property of the foreign government within the jurisdiction, to seize it upon the petition of the claimant and proceed to adjudicate his claim? M. de Paepe seems to think that the courts should do so, even where the claim is based upon a subscription to a public loan. Yet, claims of this character are matters so closely pertaining to the independence of states, that governments have often refused even to make them the subject of diplomatic representations. Indeed, should not the particular jurisdictional incompetency which M. de Paepe deplors, though it has been carried in some cases further than is desirable, be considered a result of the recognition in modern times of the independence and equality of states?

J. B. MOORE.

Lectures on the Principles of Political Obligation. By THOMAS HILL GREEN. Reprinted from Green's Philosophical Works. London, Longmans, Green & Co., 1895. — xxiv, 252 pp.

This reprint, furnishing a handy college text-book, is especially timely at this period when the *laissez-faire* theory of the state seems to be in process of abandonment in favor of a re-affirmation of the state's supremacy over individual action, more particularly under the forms of labor and temperance legislation. The editor, Bernard Bosanquet, has done well to prefix to the "Lectures" constituting the body of the book some twenty-five pages presenting the author's discussion of the "Different Senses of 'Freedom' as Applied to Will and to the Moral Progress of Man." The theories discussed with greatest prominence are those of the Stoics, St. Paul, Kant and Hegel. Professor Green's sympathies are in the main with Hegel, though modified by a conservative appreciation of Kant. The substantial result of the discussion is, that in its ordinary form the question between freedom and necessity cannot be answered because it is ineptly asked. The will is the man himself, the ethical person. So is reason the man himself, the rational person. In God these two are, of course, identical. In men, whether considered individually or historically, they only tend to become so. This is Professor Green's bond of union between the "pure" and the "empirical" ego. They are one and the same ego, viewed first as to its potentiality, second as to its momentary actuality. In the process of moralization which brings the latter nearer and nearer to the former, the state, as conceived by Hegel or the Greek philosophers, has an eminent part to perform. Professor Green is not oblivious to the efficacy of other agencies, for instance, the family, nor does he fail to observe that the state as it is — the "empirical" state — may be very far from fulfilling this function ideally. But he is clearly and consistently of opinion that the state as it should be — the "pure" state — will not only do so, but will take up into itself and strengthen with its own strength all the other relations and agencies. Underneath the strong influence of the German *Rechtsphilosophie* are discernible the perennially valuable Aristotelian conceptions, of which Oxford has never lost the tradition. The thorough blending of these two cognate systems of thought in a singularly sane and well-balanced mind gives to Professor Green's political philosophy great stability and wide and safe application.

It is almost unfair to attempt to epitomize the leading thought in a work so compactly reasoned. Were I to attempt it, I

should say that the cardinal principle upon which Professor Green grounds political obligation is twofold. In the first place, to state it negatively, if I question the rights of the state over me, I am denying the basis of my own rights. Outside of the state, that term in its widest possible significance, there are no rights. There may be might; there cannot conceivably be right. In the second place, to state the same point positively, my duties are correlative to my rights; and since the state partly furnishes and altogether safeguards the occasions for the discharge of my duties, or in other words, guarantees my existence as an ethical person, the highest aim of the "pure" state—if the reader will once more excuse the phrase—is coincident with the highest aim of the "pure" ego. It might be said that this twofold statement amounts to the same thing in the end. Professor Green would not hesitate, were he alive, to admit this. He would, in fact, strenuously urge it. It is one of the many proofs of the remarkable soundness of his book that it treats the rights of the individual and the rights of the state, the duties of the individual and the duties of the state, not only as different aspects of the same central ethical fact. The individual can have no rights which interfere with the tendency toward a higher ethical development in the individual. The individual, as such, cannot have no rights against the state, as such, though it may be his duty even if he be one of a numerically insignificant minority, to resist the unrighteousness in the state. But note, that in so resisting, he is not affirming his individual likes or dislikes, but is urging an appeal for the benefit of the state, an appeal from what I have ventured to call the "empirical" state to the "pure" state. Obversely, that in thus preferring the eternal righteousness of the state to one of its passing phases of unrighteousness, he is at the same time living for his own progress towards the "pure" or "rational" ego.

In order to bring out this view and its derivative conceptions with greater clearness, Professor Green goes into detailed criticism of the views of Spinoza, Hobbes, Locke and Rousseau. The treatment is distinguished by a noble breadth and catholicity, and by a conciseness and amplitude of statement which neither verbosely dwells on *minor* points nor fails fully to bring out any point that is really of moment. He rightly points out the greater barrenness of the Hobbesian as compared with the Spinozistic view, reexplodes the latter's identification of natural right with might, shows with clearness the progress of Locke beyond both Hobbes and Spinoza, and is especially true to his touch when dealing with that puzzling phase of Rousseau's

contract theory which discriminates between the "will of all" and the "general will."

By clarifying the last-named concept and placing it in juxtaposition with Austin's theory of sovereignty, he produces a particularly felicitous chapter on "Sovereignty and the General Will." While I should not venture to affirm that this chapter has absolutely settled the relations of these two difficult terms, all but an uncompromising analytical jurist will admit that it is an advance upon Austin.

His conception of what constitutes the principles of political obligation being thus emphasized by coincidences with, and rendered distinct by criticism of, antecedent theories, Professor Green deals to some extent with the following separate topics: "The Right to Life and Liberty," for which he proposes to substitute the right to free life; "The Right of the State over the Individual in War," which leads to a very well reasoned denial that the conception of war is at all compatible with the conception of what we have called the "pure" state; "The Right of the State to Punish," which bases punishment by a rather indirect line of argumentation upon the function of the state in maintaining rights as conditions of moral well-being; "The Right of the State to promote Morality," unfortunately a very short chapter; "The Right of the State in Regard to Property," which comes to a singularly lame conclusion in opposing to the single-tax proposition only the difficulty of distinguishing between "earned" and "unearned increment," — a position which will probably be equally unsatisfactory to both parties in the controversy; "The Right of the State in regard to the Family," where at last, in denying that divorce should be granted for incompatibility, a postulate is made to do duty for an argument, since the affirmation that it is the object of the state to make marriage a "*consortium omnis vitae*" is nowhere argued out; and a brief intimation of a scheme of lectures on "Rights and Virtues." It is impossible not to regret that this scheme failed of being filled in.

After all, it may occur to the reader to ask: *Cui bono?* The treatment is neither positive nor historical; it is metaphysical. Of what particular use is metaphysics in the matter? The answer is twofold. We are living in a period of wide-spread individualistic, not to say anarchistic, belief. This necessitates, whether we will or not, a profound reëxamination of the grounds of political obedience. If political thinkers shirk this task, it will none the less continue to be attempted by the unthinking and the half-thinking. The seasonableness of Professor Green's *Principles of Political*

Obligation lies not least in the success with which he meets individualism on its own ground. This ground is distinctly, if crudely, metaphysical. The individualist, not to mention the anarchist, is indifferent to the historical, and directly opposed to the positive treatment of the subject. To have met this evolutionary danger at its very brunt, and to have met it with large, calm reasonableness, is a distinct merit.

But there is an even greater value attaching to the work performed by Professor Green. The negative character of the *laissez-faire* period has left grievous evils to accumulate; and has allowed necessary positive reforms to go at a snail's pace, if it has not been positively hostile to them. Indeed, the individualistic and anarchistic manifestations are danger signals arising from that very neglect and opposition. In restoring the maimed state to its fullness of function while yet making the latter coincident absolutely with the needs of protection and development of the individual's highest good, Professor Green sets up a standard by which all existing institutions and proposed reforms may with safety be tested. Altogether, therefore, Professor Green's book is at the present moment the best text on this particular specialty for the hands of our collegiate youth.

CHICAGO, ILL.

WM. J. ECKOFF

La Teoria del Valore nella Storia della Dottrine e dei Fatti Economici. Di G. RICCA SALERNO. Roma, Accademia dei Lincei, 1894.

The distinguished Palermitan professor whose work is before us tells us that it is the result of a conviction that the theory of value has not yet received adequate historical treatment. His purpose, therefore, is to make a full and critical examination of the development of the theory, with especial reference to the objective economic phenomena that have accompanied the evolution. That such a study is of the highest importance cannot be questioned; and the qualifications of the author for the task no one would venture to dispute. While, therefore, we may not be satisfied that all the vexed questions about value are finally settled in the present volume, a summary of its contents cannot fail to be both interesting and suggestive.

Taking up first the general principle of value, Ricca Salerno starts from the theory of final utility, undertaking to show its historical development and its dynamic character. He reduces the the-

substantially to this: the formation of value depends on two elements, the natural utility of things and the limitation of their quantity in relation to the demand. Now, the quantitative limitation of things constitutes the specific condition of wealth and value. The fundamental economic proportion takes the form of an equation, or utilitarian correspondence, between the amount of the work performed and the value of the products, and this equation subsists through all economic stages.

According to the author, Ricardo has given us in his theory an admirable analysis of some concrete instances of the law of value; but in formulating that law in accordance with those cases alone, he has failed to rise to a synthetic general principle, or to reach the hidden cause of value. Marx's theory has perfected Ricardo's, by making labor the basis of value; but it has failed to account for the ultimate cause of value, namely, the relative utility of commodities, by which the distribution of productive forces among the various branches of production is determined. The real foundation of value is utility, not natural, not absolute, but relative — that is to say, utility in relation to the varying nature and intensity of needs, and to the amount of the commodities ready for use.

But the weak point in the utilitarian theory consists, according to Ricca Salerno, in this, that it refers to wealth produced under certain circumstances, while production and needs are relative facts depending on historical economic conditions. The reasoning of the utilitarian theorists moves in a vicious circle: the importance of the last needs, by which the final utility for the individual, or say the value of wealth, is determined, depends upon the relative amount of wealth itself. Now, as this amount has to be reproduced, it presupposes a proportion of value already established, by which production may be regulated and labor stimulated and guided. To go out of this vicious circle, the various economic relations must be taken back to the fundamental correspondence between the quantity of the work performed and the value of the wealth produced.

The general principle of value being thus laid down, Ricca Salerno proceeds to examine its transformations through the different historical phases of economic conditions. In the primitive economic forms, he says, the conditions being uniform and the means of production simple, the value of products was entirely proportional to the amount of labor required to create them. Owing to the scantiness of capital, the difficulty and slowness of its accumulation, the fewness of the tools and materials applied to production, and the

small intervals of time between the performance of the work and the obtaining of the products, the correspondence between the amount of labor and the value of its products was real and perfect. Under these conditions the worker was independent, and labor, capital and land were united.

But in the process of time production became diversified, capital was applied to it in different forms and increasing proportions, and a profound economic change followed. In fact, the proportion of indirect labor performed, or in other words, the amount of previous labor materialized in capital, went on increasing steadily; the intervals between the performance of the work and the completion of the production of the resulting commodities, came to vary greatly, and this caused differences in value. To be sure, the fundamental equation between labor and the value of its products remained, but it underwent modifications and transformations, owing to the intervention of capital and the varying proportions in which it was applied to production. These circumstances have been, according to Ricca Salerno, overlooked by the socialists, who have judged the present state of economic relations by the same criterion and the same laws that are applicable to primitive stages. Ricardo, on the contrary, clearly perceived that his law did not apply to cases in which there were differences in the duration of capital, in the proportion between capital and labor, and in the length of time required by the productive process. Unfortunately, he considered such cases as exceptions — exceptions all important in the present state of social economy — and at the same time made the mistake of formulating an abstract and unchangeable principle, while the principle of value is essentially dynamic.

Now, in the historical development of economic relations the originally uniform correspondence between the amount of labor and the utility of wealth has been replaced by a specific, manifold, variable correspondence, which assumes different aspects according to differences in the productive periods and in the local conditions under which labor is performed. After the first stage, in which the uniform equation between labor and value obtains, the economic evolution is represented by three classes of cases: (a) As to agricultural products, the equation establishes itself between the final utility of such products and the greater amount of labor required to grow on less favored soils the last portion of them that is necessary. (b) Where fixed capital contributes to production in higher proportions, the value of the commodities increases as the proportion of

fixed capital is larger. (c) The value relations among products vary with the variation of the times intervening before they are ready for use. In fact, present commodities have a higher value than future commodities, since the former depend on work already performed, that is, performed at an earlier date.

These deviations from the correspondence between labor and value appear as the process of production grows complex. The higher value of products referable to earlier labor, materialized in capital, is, then, ascribed to the tools and materials by means of which the productive period is lengthened. But it is a mistake, says Ricca Salerno, to ascribe to capital, on this account, a special productiveness and a part in giving value to the product. The converse is true. The product does not acquire a greater value from needing a greater proportion of materials and tools; on the contrary, these tools and materials — capital — acquire a differential reflex value from the high value of the product, corresponding to labor of an earlier date.

By this theory Ricca Salerno accounts not only for the profit of capital but also for the rent of land in the present stage of economic development. Rent, he says, is not properly the result of the different productiveness of soils, but of the greater labor rendered necessary by production on less fertile lands. Indeed, as the latter are gradually used for cultivation, and the value of the product of the best soils no longer corresponds, except partially, to the quantity of labor applied to them, a balance is left, which consolidates itself in the better soils, and proceeds from the differential labor bestowed upon the less fertile ones.

The owners of commodities now ready for use, or of agricultural produce grown upon the more favored soils, receive in exchange a value more than proportionate to the quantity of labor expended in production, and, therefore, an excess of wealth, which constitutes respectively profit and rent. From this differentiation in value arise all the phenomena of the various classes in production, the differences in individual shares of the products, and the distinction of profit or rent and labor.

Starting from these principles, Ricca Salerno criticises the various doctrines of value, particularly the doctrine of cost. In all these doctrines the derived phenomena of value have, in his opinion, been mistaken for its fundamental characteristics; the transitory effects of its alterations have been mistaken for results of its permanent constitution. In seeking the cause and the law of value in labor, in

land, in capital, in the efforts and sacrifices required by production, that is, in the partial and reflex manifestations of value, economists have failed to detect the general principle which determines its nature, its various phases and their intimate connection with each other. They have inverted the order of effect and cause, and have made value the effect of economic facts and relations of which it is really the cause.

The author proceeds next to explain the dynamics of exchange, starting from the principle of relative utility. In the discussion of this particular subject, he accepts — not, however, without enlargement and illustrating it — the doctrine of Böhm-Bawerk. All the phenomena of distribution are thus brought into connection with the theory of value: the capitalist draws his profit from the exchange of a finished product for a commodity surrendered at some previous time; the workman receives his wages as an amount of present commodities exchanged for the future product; the landlord gets his rent from the exchange of his agricultural products for manufactured ones, on the measure determined by the most costly production. The differences in values in wealth obtained at different times and places determine the comparative utility that gives rise to the various exchanges, whereof they at the same time constitute the basis.

In the last part of his work Ricca Salerno delineates, with the vigor of synthesis and breadth of learning, the economic evolution in its successive stages. In these the progressive increase of population brings about various determinations of value, about which social relations and the whole economic constitution shape themselves. Thus he interprets the various phases of economic history down to the capitalistic system prevailing in our days.

Limitations of space forbid any extended criticism of the suggestions of the theory which I have very summarily outlined. For reasons stated on other occasions, I do not accept the Austrian theory of value, to which Professor Ricca Salerno has endeavored to make fruitless additions by the application of the historical method. To connect, as the author does, all the principal economic phenomena with one fundamental principle, involves the exercise of great ingenuity and produces the plausible appearance of logical acuteness; but on close examination it is hard to escape the impression that this unification is somewhat forced and artificial. Again, the conclusions at which he arrives through his investigations concerning value are discouraging. It is useless, he says, to seek for anything real in value in exchange. The search for the secret of the objectivity of value. An objective

of value is mere delusion. All we actually have is but a variety of individual values and relative differences between utilities, wherefrom exchange arises. But surely Professor Ricca Salerno must admit that when the fundamental phenomenon, upon which all the others are made to depend, is reduced to an expression so vague and inconsistent, and when its objectiveness, moreover, is absolutely denied, the situation is not inspiring. If his view were true, what would become of the whole science of economics?

Lastly, the interpretation which Ricca Salerno gives of the historic evolution of economic conditions, while ingenious, would seem to require a much ampler treatment, and a better support of historical investigation. Although diverging from Loria's, it unmistakably has some points of contact with it; and, on this account a comparison of the two interpretations would be advisable.

But all the queries one may sincerely raise can in no degree diminish the importance of Ricca Salerno's researches. These may leave the everlasting question of value still open, but they certainly furnish what may without the least exaggeration be called the best scientific contribution of our day to its solution. UGO RABBENO.

UNIVERSITY OF MODENA.

Economics and Socialism. A Demonstration of the Cause and Cure of Trade Depressions and National Poverty. By F. M. LAYCOCK, LL.B. London, Swan Sonnenschein & Co., 1895.—390 pp.

This book reviews the more fundamental principles of economics for the purpose of testing the claims of socialism, on the one hand, and of the single tax, on the other. A primary object of the work is to point out the contrast between these two ideas, and to establish the fallacy of socialism and the beneficence of the single tax. The author believes in a natural and individualistic system of industry; and his view of what may be realized under such a system is intensely optimistic: "If, then, mankind pays each man, as nearly as it can judge, according to the service he renders, it follows that, with equality of opportunity, he who receives most renders most service." This result, he admits, is not yet realized; but he contends that it may be gradually approached if the civil power shall be so exercised as to ensure the necessary equality of opportunity, and that the most important measure tending in this direction is the concentration of all taxes into a tax on land.

There is a passage which seems to imply that the virtual confiscation — the direct seizure of rent for the benefit of the state — is to some an essential part of the scheme, is, in the author's view, to be at least partly avoided. Owners are to be paid for the loss of land value itself that they really own: the boldest spoliation of the landlord class is apparently not to be practiced. The burden of the argument is that, when once introduced, the land tax will serve as a remedy for trade depressions and for natural poverty; and in its continuous working, rather than in its introduction, it will be in harmony with ethical principles.

As the ordinary plea for the single tax fails in its endeavor to justify morally the spoliation involved in seizing rent, this argument fails on the more practical side. It does not show how spoliation could, in practice, be wholly avoided; and to the average reader it probably does not show that the tax, if it could be imposed without robbing the land-owners, would, as a result, relieve poverty.

J. B. CLARK

Report of the Massachusetts Board to Investigate the Subject of the Unemployed. DAVIS R. DEWEY, DAVID F. MORELAND, J. C. PERHAM, Commissioners. Boston, 1895.

This document of nearly 800 pages (House Doc., No. 50) submitted by the commissioners in January and February, 1895, is an excellent piece of work in social investigation. It is not too much to say that thus far it is something of a classic on the subject.

Part I of the *Report* deals with measures adopted in the year of 1893-94 for the relief of the unemployed in cities and towns of Massachusetts and elsewhere. A brief summary of methods and results is given for the five different agencies officiating in the work:

1. *Special relief committees.* In most communities the applicants for relief were almost wholly of the unskilled-labor class. The applicants in the mass, with proper exceptions, "they were economically inefficient members of society." Relief by citizens' committees was given on investigation to resident applicants; non-residents were cared for by the public poor authorities. The results of the emergency enterprises conducted for relief of the unemployed was industrially profitable.

2. *Relief on public works.* Twenty-one cities out of thirty reported employment on public works, regular or special. Of the forty

towns, thirteen attempted to do likewise. The wages paid varied from \$1 to \$2 per day, and occasionally rose above \$2. From a business point of view the work done under emergency conditions was estimated to cost between twenty-five and sixty per cent more than by contract, labor employed under these conditions being almost always inferior in efficiency.

3. *Relief by labor organizations.* Relief came to some extent from savings accumulated in prosperous times, but mainly from extra funds on hand that had been raised for other purposes, from special funds voluntarily contributed by members for official distribution, and from money collected from various outside sources in aid of any persons known to be in want from non-employment. The labor representatives on public committees showed a marked degree of capacity in dealing with the situation.

4. *Relief by private charities.* In this class of relief charity-organization societies, churches and individuals engaged. The first of these generally confined themselves to investigation and to directing applicants to sources of material relief. The churches generally furnished material aid. The Boston Associated Charities dealt with fifty per cent more cases in 1893-94 than in the previous year; so also in Worcester and Lynn. In Lawrence, Lowell and Springfield the number of aided families increased 100 per cent over 1892-93.

5. *Relief by public poor-departments.* This kind of relief is given to persons having no settlement in town, city or state, by the state board of lunacy and charity, and to persons having settlement, by local poor-boards. As compared with the preceding year, 1893-94 showed an increase of 33,000 in the number of persons relieved, and of \$81,000 in the expenditure.

The public poor-departments of all the cities and towns of the state granted out-door relief alone to the amount of over \$700,000 for 1893-94. Thirteen citizens' relief committees raised about \$147,000. Appropriations to give employment on public works for relief of the unemployed amounted to \$353,000. Thus the total from these three classes of relieving agencies reached \$1,200,000.

Part II of the *Report*, on "Wayfarers and Tramps," makes clear the distinction between honest work-seekers and "dead-beat" tramps. The weight of evidence tends to show that not more than one in ten of those who apply in ordinary times is deserving of assistance. The other nine—the professional or occasional tramps—will never face the requirement of hard labor as the condition of receiving aid. Hence universal experience suggests a

rigorous work-test as the essential expedient for ridding the community of tramps. A state labor colony is recommended.

In Part III, on employment on public works, the commission dealt with current proposals looking to the more extensive engagement of the state or municipal authorities in industrial enterprises and a guarantee of employment. The propositions considered were the

1. That the state or municipality should establish factories and engage in industrial enterprises, with a view of giving employment.

2. That the state should establish state farms.

3. That the state should increase its ordinary public works, and assign a part of such undertakings to the winter season.

4. That the public works, of either the state or municipality, should be executed directly by the public authorities, and that no work should be done by contract.

5. That in all public works only residents should be employed.

After considering a large body of testimony on the subjects mentioned, the commission concludes:

1. That as a rule the city does not do construction work directly as cheaply as can a contractor to whom the work is entrusted.

2. That in exceptional cases, with civil service rules well enforced and unrestricted by ordinances on rate of wages and condition of labor, the city can do its own work as cheaply as any private employer can employ labor.

3. That the work is generally better in quality when done by direct municipal employment than when done by contractors; but in small cities cannot do certain kinds of difficult work, no legislative restriction of the contractive right of cities can be recommended.

4. Non-employment is frequently aggravated by the influx of non-resident and alien laborers brought in by contractors.

5. The plans for the establishment of factories or farms on state initiative appear impracticable.

Part IV, on the causes of non-employment, is the result of special inquiries made into the conditions of eight typical industries.

Part V, on remedies, after reviewing the temporary measures resorted to, suggests permanent preventive measures as follows:

1. Removal of residents of cities to the country and farms.

2. Abolition of the competition and hence displacement of free labor that is occasioned by the labor of inmates of reformatory and penal institutions.

3. Reduction in the hours of a day's labor.

4. Restriction of immigration.
5. An extension of industrial education.
6. Improvement in intelligence and employment offices, or establishment of free employment offices.

Each of the five parts of the report is followed by a full index and well-selected evidence, very little if any of which serves as padding. Part I has besides a select bibliography on measures for relieving the unemployed in American and European cities. There are ample statistical tables. This part of the work is particularly well done. There is nothing radical in the recommendations. On the whole the *Report* is one of the most luminous documents on the question in this or any other land. It deserves to rank with the report of the Parliamentary commission on labor issued in Great Britain during 1893-94.

JOHN FRANKLIN CROWELL.

SMITH COLLEGE.

Life and Labour of the People in London. Edited by CHARLES BOOTH. Vols. V. and VI.: Population classified by Trades. London, Macmillan & Co., 1895. — Small 8vo, 416 and 382 pp.

These two volumes, continuing the general sociological description of the working classes in London that was begun in the previous volumes, may be said to be based on the census, and at the same time to be illustrative and explanatory of the census figures. First, for each large trade or group of trades the census figures of 1891 are carefully analyzed. For instance, there were 32,666 painters and glaziers, including 161 females. Of these 22,982 were heads of families; the total number of persons represented by them was 105,956; and the average size of the family was 4.61. Of the heads of families, 65 per cent were born in London, and 35 per cent out of London. Of the total number, 7 per cent were employers, 84 per cent were employed, and 9 per cent were neither. The average age was greater in this than in other trades—a fact that is due to the influx from the provinces and the frequency with which men resort to this trade late in life. Nearly one-half of the families lived in “crowded” house conditions, that is, with two or more persons to a room.

These carefully arranged statistics give us a pretty fair notion of this trade. They are supplemented by the results of private inquiries in respect to the regularity of employment, the usual number of working hours, customary wages, membership in trade unions and benefit societies, the general prosperity or decline of the trade,

apprenticeship, habits of the workmen, relations to employers, condition of their homes. The whole study exhibits a judicious blending of the "statistical" and the "individual-monograph" methods of describing social conditions which is both interesting and instructive. Criticism will undoubtedly be heard from the partisans of each of these methods, but I know of no other work where they have been so successfully combined as in these two volumes. The effect is much more satisfactory than, for instance, in Mr. Booth's previous volumes, or in Commissioner Wright's *Slums of Great Britain* or in *Hull House Maps and Papers*.

It will be objected, from the statistical side, that the book contains too great a mass of details, which no human being can ever hope to remember or to bring into orderly arrangement. It is like the continuous drama of the Chinese theatre where the play goes on forever without simply incidents, without plot or conclusion. It may be answered that the framework is statistical; and in one respect, at least, Mr. Booth has given us a very remarkable statistical analysis. On the basis of the number of rooms occupied and the keeping or not of a servant, the whole population of London has been classified according to social condition. The general result goes to show that 31.5 per cent of the population is "crowded" and 68.5 per cent "not crowded." Comparing these figures with the 30.7 per cent living in poverty and 69.3 per cent living in comfort, which results from the former investigation made by the school-board visitors, we have a remarkable coincidence. Mr. Booth hastens to say that these classes are not absolutely coincident, because living in close quarters is no certain test of poverty, and while some districts are more crowded than poor, others are more poor than crowded.

The followers of Le Play will probably maintain that the method here employed is not the true "monograph" method, that is, the analysis of single families according to all the facts regarding their economic, social and moral condition. But notwithstanding the admirable lessons which have been forced upon us by that school, to the value of minute investigation of social conditions, yet the results have always seemed to be somewhat fragmentary and incapable of coördination. It is a relief to have the isolated facts brought together by some sort of a classification in groups.

Finally, scattered through these pages are interesting notes on economic conduct and economic evolution which would have delighted the soul of Adam Smith. Such are, the refusal of the stonemasons to do iron work and their subsequent regret that they

given up the best part of their trade to the boiler-makers ; the persistence of some trade unions in refusing any reduction in wages until the whole trade had been lost ; the loss of the watchmaking trade to London because the masters neglected to adopt new improvements ; the changes in method, the introduction of machinery ; — in short, vivid pictures of the constant movement necessary to keep industry alive.

RICHMOND MAYO-SMITH.

La Question Monétaire. Mémoire par G. M. BOISSEVAIN.
Traduit du Hollandais par J. F. RODE. Paris, Guillaumin & Cie.,
1895. — 100 pp.

M. Boissevain was a representative of the Netherlands at the Brussels monetary conference, and he now presents, in a brief compass but with entire clearness, the view of enlightened advocates of international bimetallism.

In its crudest form the monetary controversy in the United States resolves itself into the question whether this country alone shall resume the free coinage of silver dollars having in pure metal sixteen times the weight of gold dollars. While the popular debate is on this issue, works advocating international bimetallism are much in point, and the circulation of them would be exceedingly useful. The first question to be decided is that of nationalism as opposed to internationalism in monetary policy. Shall we try to live by ourselves, and govern our coinage much as we should do if our own boundaries included the civilized world ? The absurdities of such a policy are clearly exposed by an argument for international bimetallism that reaches a scientific level. The work of M. Boissevain is, indeed, a plea for the coining of both gold and silver ; but it is even more strikingly a plea for internationalism in monetary policy. What the author desires is, not a union like the Latin Union, but one that shall so regulate the coinage of each constituent country as to afford an assurance that both gold and silver shall be used as media of international payments, in a ratio that shall be everywhere uniform ; and that no legal obstacles to the free importation of either metal on this basis shall anywhere be created.

The work points out the evils of a “hybrid system,” in which both gold and silver have the legal-tender quality, without being commutable, or legally exchangeable, the one for the other. He combats the view that, when they are so used, they are to be regarded as two different commodities, the value of each of which has inde-

pendent variations. The use of both as money reacts on several values and makes them interdependent. Much coinage of silver and melting of gold would raise the value of the one and depress that of the other. He gives extended tables to show that the price in silver of merchandise has not greatly varied in recent years, while gold has gained in power to purchase goods about the same ratio in which it has gained in power to buy silver. He protests against the view that a perpetual fall of general prices is attended by no serious evils.

The kernel of any argument for international bimetallism must be that law of compensatory action which was propounded by Wolowicz by virtue of which an alternating coinage of gold and silver should keep the value of standard coins of each metal uniform. M. Boissieu has effectively presented, in the light of recent events, the theoretical case in favor of the bimetallic policy.

J. B. CLARK

Principles and Practice of Finance: a Practical Guide for Bankers, Merchants and Lawyers. By EDWARD CARROLL, New York, G. P. Putnam's Sons, 1895. — vii, 311 pp.

There is an unfortunate confusion in the English use of the word finance. According to continental usage "finance" ought to mean the science of governmental revenues and expenditures; but English writers have persistently applied the name to that part of political economy which has to do with monetary and commercial affairs. Not only is this the popular usage, but it has the authority of such eminent writers as Jevons and Giffen; so that Bastable felt obliged to recognize the double meaning of the word. It is a difficult transition to apply the same term to the affairs of a municipality, for example, and to those of a private business corporation, so it is not strange that the word finance should be applied in both cases.

The existing confusion in England and America is so great that it is impossible to predict whether a book entitled "Finance" will turn out to be a treatise on public economy or a manual of stock speculation. Under these circumstances one is not surprised to find that Mr. Carroll's book is a good deal of a mixture, without containing anything which the title would suggest to a German or Italian reader. It is avowedly an attempt to combine a treatise on the principles of monetary science with a description of certain

business transactions. The "Principles" are set forth in Part I—a few pages of ill-digested political economy, dealing chiefly with the mechanism of exchange. There is no exhaustive treatment of the silver question, but the author shows in a few words that he has no sympathy with bimetallism. Part II is devoted to "Practice," and contains some useful information on a variety of topics. Here the author describes the currency and banking systems of the United States, and the architecture and operations of the New York sub-treasury, clearing house and stock exchange, besides explaining the business methods of corporations and commercial houses in general, and the mysteries of stocks and bonds, bills of exchange and various other forms of credit. Nearly half the book is devoted to the operations of banks and similar institutions, such as trust companies and building and loan associations. At the close there is a summary of the statutory provisions of all the states and territories relating to rates of interest, days of grace and legal holidays, and a glossary of commercial terms.

The book is badly written, and entirely devoid of references. Indeed, it would be difficult to find authority anywhere for some of its statements, as for example the various original and remarkable definitions of "capital." After leaving the pitfalls of economic theory the author is more at home, but even his statements of fact are not always reliable, and are sometimes quite unintelligible.

COLUMBIA COLLEGE.

MAX WEST.

La Propriété Foncière en Grèce, jusqu'à la Conquête Romaine.

Par PAUL GUIRAUD. Paris, Hachette, 1893. — 654 pp.

This is a work that well deserved to receive, as it did, the Bordin Prize from the Academy of Moral and Political Sciences, and to be printed, as it has been, at government expense, upon the advice of the *comité des impressions gratuites*. The author has laboriously brought together every scrap of information as to property in land and agrarian conditions generally, to be found in Greek literature; he has arranged it systematically; and he has commented on it with a good deal of judgment.

His main conclusions may be briefly stated. The history of property in Greece began, he holds, with family ownership; of communal ownership he finds no trace. From family ownership, individual property slowly disentangled itself. But it is to be noticed that he identifies the early family with the γένος, and finds a parallel for

it in modern Slavonic house-communities. He believes that in the heroic age estates were large ; that by the time of Aristotle they had come to be very greatly subdivided ; and that in later centuries a new system of "*grande propriété*" grew up out of the indebtedness of the small owners. Slavery apparently existed from the first ; but serfdom arose subsequently to the Homeric age, and though many causes contributed to it, M. Guiraud seems to think it is substantially explicable as hereditary freedmanship (page 122 *seq.*). He does not restrict himself to the larger aspects of his theme, but adds several chapters on the land law and legal procedure of the age of Demosthenes.

Detailed criticism of the argument must be left to classical scholars. It may, however, be observed that M. Guiraud hardly realizes with sufficient clearness how scanty the evidence is on some points of the first importance, how doubtful is its interpretation in many cases, and how slight is the value to be attributed to much of it. His style is clear and straightforward, if not particularly lively, but the book could have been compressed with advantage, and many safe but trite reflections might have been omitted. It is a typical example of specialism, without literary charm or width of outlook, but conscientious and thorough. So far as it goes, it is worthy of a pupil of M. Fustel de Coulanges, — and this M. Guiraud gives us abundant reason for supposing he will regard as high praise.

HARVARD UNIVERSITY.

W. J. ASHLEY.

A Scientific Solution of the Money Question. By ARTHUR KITSON. Boston, Arena Publishing Co., 1895. — viii, 418 pp.

The author of this book has attempted a great work. He is convinced that "the money question is the key to all the various other social questions," and he is convinced that he himself has discovered the true solution of the money question. Hence he claims to point the road to the "emancipation of industry" and universal prosperity. His aim is praiseworthy.

In political economy up to the present time he finds nothing good. Apparently the economists are to blame for all our ills ; for the author says that the wasteful and unjust distribution of products into wages, rent and profits has taken place "under the régime of political economy," which, if a "true science," should "answer all the riddles that have for ages been propounded by the social sphinx," and should "abolish want and the fear of it." He fails to point out,

however, that political economy is in good company. Despite the great advances in the sciences of meteorology and geology, we still have drouths and earthquakes.

The author next attacks the various points of economic theory in turn, and disposes of the whole body of doctrine to his own satisfaction. This is preliminary to his solution of the money question. This solution lies in the firm grasp of the idea of value as a "ratio," and therefore as something which cannot be measured, but can only be expressed. This idea leads him to the conclusion that money cannot be a measure, but must be rather a means of expression. Evidently a commodity expresses nothing. This can be done only by language and numbers. Money then is a system of numbers. It was all right originally to compare commodities in terms of gold, "using gold merely as their arithmetic." But the ratios being established, there was no further use for the commodity. The numbers should have sufficed. It would be simpler if Mr. Kitson, having abolished the thing money, should abolish the word money, and come out frankly for the multiplication table. The practical use of numbers as money is to come through printing these numbers on paper, which is evidently cheaper than gold. But this printing is to be no longer a government monopoly. It is a right that "must revert to the people"; that is, everybody is to print as much as he needs. "The *only* requisite, says the author, which these notes need to constitute money is, that the members of the community shall agree to accept them from each other in exchange for products." This is true. It now only remains for somebody to discover such a community. The author actually refers to the experience of the colonies during the Revolution to show that paper can be used as money. This is an astonishing slip. In putting forth his scheme as something new he should never have admitted any knowledge of the French *assignats* or the paper money of our Revolution. He does, however, omit to record that the trial made by the colonies of a scheme similar to his resulted in the notes being used to paper a barber shop.

The good in this book is the light it throws on the use that can be made of certain very doubtful passages in some standard works, and on the real inconsistencies (besides many fanciful ones) which exist in the writings of some first-class economists. It also serves to show that we may look in the future as in the past for a certain regular output of arguments in favor of fiat money, whatever the attitude of the popular mind at the particular moment.

The author concludes by declaring that the money problem is

"the *fin de siècle* problem." We believe this has escaped the notice of Herr Nordau in his examination of the many meanings of the overworked phrase. If, however, that imaginative scholar should turn his attention from art and literature to some so-called science, he might find ample material for a second volume of *Degeneration*.

BOWDOIN COLLEGE

H. C. EVANS

The American Historical Review. Vol. I, No. 1. Edited by G. B. Adams, A. B. Hart, H. P. Judson, J. B. McMaster, F. J. Sloane, H. Morse Stephens. J. FRANKLIN JAMESON, Managing Editor. New York, Macmillan & Co., 1895. — 208 pp.

The appearance of this new quarterly will be welcomed by all in this country who are interested in historical study, and by scholars of other lands whose attention may be directed to American political or social development. In external form it leaves nothing to be desired. It is the express intention of its editors that it shall be open to contributions from workers in all parts of the domain of universal history, while attention will of course be especially devoted to the mediæval and modern periods. Certainly, the scope of the publication will be broad enough to justify its name, and to satisfy the most catholic taste. Some space will be devoted to the printing of original documents, but apparently the aim is to make the *Review* as largely critical as possible.

To the first number Professor Sloane contributes an article on "History and Democracy," and Professor Tyler one on "The Loyalists of the American Revolution"; Henry Adams writes on "Crillon," Edward de Crillon, Professor Turner on "Western State-Militarism in the Revolutionary Era," and Henry C. Lea has a brief paper on "The First Castilian Inquisitor." Of these all but the last concern American history. Professor Turner's article is distinctively an investigation, the first installment of a careful study of the origin of Vandalia, Transylvania and the other commonwealths early founded by the settlers west of the Alleghanies. Professor Tyler contributes what has long been needed, a plea for the fair treatment of the American Loyalists. This article, together with Professor Sloane's paper, may be taken as indications that this *Review* will stand for a less partisan and more catholic treatment of early American history than has hitherto been common.

Out of a total of 208 pages in this number 87, or about two-fifths, are devoted to book reviews. The utility of this department is be-

question, but of some of the reviews which appear here the most noticeable characteristic is diffuseness. The "Notes and News" at the close of this number contain much useful information concerning recent publications, with notices of the lives of prominent historians lately deceased. Only the best wishes can be expressed for the success of so worthy an enterprise thus auspiciously begun.

H. L. OSGOOD.

Les Origines du Droit International. Par ERNEST NYS.
Brussels, Alfred Castaigne, 1894. — v, 414 pp.

For a number of years Professor Nys has been engaged in studies that relate to the origin of international law. His monograph on the history of international law in England, which was published in 1888, was reviewed at the time in this QUARTERLY, and the hope was then expressed that he would continue to prosecute his investigations on the line on which he had begun them. The present work is a comprehensive presentation of the results of studies of which particular portions have heretofore been published.

In a broad sense, Professor Nys observes, a history of the law of nations may be said to embrace the entire history of humanity. It is, however, in the latter part of the Middle Ages, the period preceding the era of the modern civilization, that the student of the origin of international law finds his most important materials. The middle ages, according to Professor Nys, formed, to a greater extent than is commonly supposed, an epoch of discussions. We find among the mediæval writers disquisitions not only upon questions relating to the Papacy and the Empire, but upon all sorts of questions that rise out of the pacific as well as out of the belligerent relations of peoples. The legitimacy of war and the causes of a just recourse to arms were minutely considered. The institutions of private war and reprisals, which long had legal recognition, were criticised, condemned and rejected. Wars against infidels formed the subject of polemics. Mediation and arbitration were suggested and tried. Appeals were made to public opinion, and the theory of the European equilibrium was established. Among the many examples given by Professor Nys of the appeal to public opinion I do not observe an early case to which Freeman ascribes much historical significance, — the appeal made to the European courts by William of Normandy, when he was preparing to move against Harold for the possession of the English throne. This appeal was made, however, not with a view to the

peaceable settlement of a difference, but for the purpose of justifying a resort to arms.

Professor Nys concurs with Lorimer in the opinion that the scholastic jurists have been treated with injustice. It is certain that they have been treated with almost universal neglect. Professor Nys shows, especially in his chapters on the causes of war, on war against infidels and heretics, on the declaration of war, on the laws of war, and on peace and treaties of peace, how thoroughly the scholastics discussed many of the questions which were subsequently illumined by the genius of Grotius. As early as 1882 an author drew attention to this subject in his essay on the law of war and the precursors of Grotius; and in the following year another Belgian publicist, M. Alphonse Rivier, in his *Note sur la Littérature du Droit des Gens avant la Publication du JUS BELLI AC PACIS* of Grotius, made a list of the early juristic writings, with comments upon their character. In the present work Professor Nys shows to what extent those writings furnished the ideas of later publicists.

In the chapter on diplomacy and permanent embassies, the author traces the growth of the European diplomatic system, from its development among the Italian cities down to the period where the rights of embassy became established and the privileges of diplomatic agents were definitely understood. While the diplomacy of this time is characterized by great formality and subtlety, one cannot fail to be impressed with the eminent character and attainments of the men by whom it was conducted.

It is a pleasure to recognize in the work of Professor Nys the product of extensive research and of sound learning. He has placed under obligations all students of the origin of international law.

J. B. MOORE

RECORD OF POLITICAL EVENTS.

[From May 17 to November 10, 1895.]

I. THE UNITED STATES.

FOREIGN RELATIONS. — Amid a general calm in this field the only topic of importance has been the attitude of the United States toward **Spain and the Cuban insurgents**. Many manifestations of sympathy with the insurgents have appeared in all parts of the United States, and the so-called "Jingo" press has advocated governmental action in their support. The administration, however, has adhered strictly to its duties as a neutral. On June 12 President Cleveland issued a proclamation reciting the provisions of our neutrality laws, warning all citizens against violating them, and enjoining upon officers of the government the utmost diligence in their enforcement. In accordance with this proclamation the Navy Department has stationed several war ships in the vicinity of Key West to intercept the passage of Cuban sympathizers from Florida and other Gulf states, and the Department of Justice has been very active against attempts to enlist men or secure stores on behalf of the insurgents. Two incidents have been regarded as indicating the eagerness of Spain to remain on the best of terms with the government of the United States. The first was the prompt settlement of the *Alliança* affair (see last RECORD), May 16, by a disavowal of the Spanish cruiser's act, an expression of regret therefor, and a promise that no repetition of the act should occur. The second was the payment of the claim of an American citizen, named Mora, for property confiscated during the last Cuban revolt. The justice of this claim had been conceded by the Spanish government nine years before, but the payment of the money had been on various pretexts postponed. By resolution of the Fifty-third Congress the Department of State was directed to press the claim, and the result was its payment in September. — It is understood that the State Department, in accordance with the resolution of the last Congress, has made urgent representations to Great Britain as to the desirability of settling the boundary dispute with Venezuela by arbitration.

INTERNAL ADMINISTRATION. — **Cabinet changes** were rendered necessary by the unexpected death of Secretary Gresham, May 28. On the 7th of June the President announced the appointment of Attorney-General Olney to succeed Gresham as Secretary of State, and of Judson Harmon, of Ohio, as Attorney-General. — The payment of **sugar bounties** under the act mentioned in the last RECORD (p. 368) was brought to a standstill by the refusal of Mr. Bowler, Comptroller of the Treasury, to approve the claims. His ground was that the law granting the bounties was

unconstitutional. His final decision on the subject, rendered September 1, 1895, referred the matter to the Court of Claims, from which an appeal was taken on the constitutional question to the Supreme Court of the United States. The claimants appealed from the comptroller to the secretary of the treasury, who on November 9 heard the whole question argued, and decided finally whether it shall go to the courts. — On July 26 Secretary Morton ordered the **abolition of the seed division** of the Agricultural Department. This action signifies the final success of the administration's efforts for the free distribution of seeds, which congressmen had sought to perpetuate. An opinion of the attorney-general, given last April, sustained the government's contention that it was lawful to send out only seeds that were "new and uncommon to the country," and that it was in the secretary's power to reject all bids under proposals to furnish such seeds. Accordingly Secretary Morton announced that "there will be no seeds purchased for gratuitous, promiscuous distribution during the fiscal year 1896." — At the end of July some alarm was occasioned by reports of trouble with the Bannock Indians in southwestern Wyoming. Troops were sent to the spot, but no disturbance ensued. It appeared later that the panic was due to an affray, attended with loss of life, between state constables and Indian warriors, the latter, while hunting in the region, had been arrested for acts which were in violation of state game laws, but which, it is claimed, were authorized by the treaties with the United States under which the Indians had reserved their reservations. The questions at issue between the state and national government have been taken to the courts for determination. A new treaty was concluded with the Blackfeet Indians in September by which a part of their reservation in northern Montana, where important gold deposits have been found, was sold to the government for \$1,500,000. The sale is, of course, subject to the approval of Congress. — **Civil service reform** has again been materially advanced by action of the president. Messrs. William C. Rice, of New York, and John B. Harlow, of Massachusetts, were appointed in May to succeed Messrs. Roosevelt and Lyman as civil service commissioners. On May 24, at Secretary Morton's request, the president put into the classified service all the remaining excepted and competitive places in the Department of Agriculture above the grade of laborer, omitting only about half a dozen of the highest offices. So many places were affected by this order, especial significance attaching to the fact that the chiefs of division were included in its operation. On May 25 the employees of the government printing office, 2700 in number, were ordered under the classified service. This action was at the request of the employees themselves. On July 15, 500 pension-agency clerks were brought under the rules, and later orders extended the reform to about 4000 more in various departments. On the 20th of September President Cleveland, upon the recommendation of Secretary Olney, issued an important order in reference to appointments to the office of consul or commercial agent. It directs that every such office carrying a salary or fees of no

than \$2500, or less than \$1000, shall in the future be filled (*a*) by transfer of a qualified person from some other place under the Department of State ; or (*b*) by appointment of some person who, though not in the department, has formerly served satisfactorily therein ; or (*c*) by appointment of some person who, being named by the president, shall give evidence of his qualifications by a non-competitive examination. Finally, by an order of November 8, the president took the first step toward bringing the fourth-class postmasters under the civil service rules. The order contemplates the consolidation of lesser with large free-delivery offices, and provides that in such cases the postmasters of the former shall become employees of the latter, and hence shall be subject to the rules of the classified service.

THE FINANCES AND THE CURRENCY.— The condition of the Treasury has continued far from reassuring. At the end of the fiscal year, June 30, the deficit for the year amounted to \$42,825,049. For the first third of the new year, ending October 31, the expenditures exceeded the receipts by \$16,848,335, indicating a large deficit for the current year also. In maintaining the gold reserve the administration has been somewhat more successful. Under the operation of the contract of February 8 with the Morgan-Belmont syndicate (see last RECORD, p. 366) the gold in the Treasury increased steadily, till, with the last payment for bonds under the contract, June 26, the amount stood at \$107,000,000. About the middle of July, however, withdrawals for export began to reduce this sum, and on the 29th the syndicate indicated a purpose to fulfill its obligation to sustain the Treasury, by depositing enough gold to make good the amount withdrawn. In August the drain on the Treasury's supply became very heavy, and successive deposits by the syndicate on the 13th and the 20th were all that kept the reserve above the hundred-million point. During September the same process continued, and various national banks not connected with the syndicate turned over gold to the Treasury, but even this did not avail to maintain the reserve, which had fallen by the middle of the month to about \$96,000,000. On the 13th Mr. J. P. Morgan announced that the syndicate was accumulating gold all the time and turning it over to the Treasury, and that it would continue to do so even after October 1, when all obligations under the contract would terminate. The policy pursued by the syndicate in keeping up the Treasury's gold served to reduce materially the large profit which its members would otherwise have derived from the sale of the bonds. — An odd incident in connection with the general currency question was the issue of a manifesto, July 19, by Master-Workman Sovereign, of the Knights of Labor, calling for the establishment of a boycott on national-bank notes. The manifesto elaborated the familiar argument that the banks are responsible for all the alleged woes of the working classes, and urged "our people" to accept no national-bank notes in ordinary business transactions. Such a course, it was held, would precipitate the great conflict between the people and the banks, which would involve in its issue the corporations and every form of

private monopoly, and would "establish an impassable barrier between toiling masses of America and the Shylocks and pensioned lords of the world." The reception of the manifesto by the workingmen in general was apparently very cool, and no effect on the currency has been reported.

THE FREE-COINAGE MOVEMENT.—The convention of silver miners which was in session at Salt Lake City at the close of the last RE rejected effected an organization called the Bimetallic League, with the object of securing the free coinage of silver at the ratio of 16 to 1. Under the auspices of this organization a large convention met at Memphis, June 1, at which delegates from all the Southern and most of the Western states exchanged views, and expressed their adhesion to the 16-to-1 form. The sentiment of the assembly proved rather adverse to the idea of a national silver party, and favorable to the project of committing the national Democratic Party to the free-coinage doctrine. A conference of leading silver Democrats at Washington, August 14-15, adopted measures designed to render certain the approval of free coinage by the national Democratic convention in 1896. Meanwhile the free-coinage Democrats in various states had been seeking to commit their state organizations to their cause. In Illinois they were in a large measure successful, at a convention at Springfield, June 5, taking strong ground for the 16 to 1 coinage, and against the Cleveland administration. Regular Democratic state conventions in Mississippi, Missouri and Nebraska adopted free-coinage platforms. In the latter part of May Secretary Carlisle made a tour in the South and West to check the silver movement among Democrats. On the 23d he addressed a large convention of "sound money" Southerners at Memphis, and later he took active part in Kentucky politics. The Kentucky Democratic state convention, June 26, rejected the free-coinage resolution by a large majority, though it nominated a silver man for governor. In August the party conventions of Iowa and Ohio rejected free coinage, while in September an administration wing of the Nebraska Democracy took like action.

THE FEDERAL JUDICIARY.—The final decision of the **Income Tax Cases** was rendered by the supreme court on May 20. By a vote of five to four it was held that the income tax imposed by the act of 1894, taken as a whole, a direct tax; and that, since no apportionment among the states according to population was provided for, the act was unconstitutional and void. The opinion of the court was delivered by Chief Justice Fuller, and very vigorous dissenting opinions were presented by Justices Brown, Jackson, Harlan and White. — On May 27 the supreme court by unanimous opinion, denied the application for *habeas corpus* in the case of **Debs and others**, leaders of the railway strike in 1894 (see last RE pp. 371, 372). It was held that the national government can remove obstructions to interstate commerce by action of either the executive or the judicial department; that in the latter case the civil proceeding by injunction is the proper one, though it cannot be considered as supplanting criminal

cution for violations of the law ; and that the action of the circuit court in the injunction and contempt proceedings of this particular case was wholly within its jurisdiction. — On June 11 the circuit court of appeals at Richmond, Virginia, reversed the decision of the lower court through which an injunction had been issued restraining election proceedings under the South Carolina registration law (see last RECORD, p. 373). — On September 11 the circuit court for the western district of Pennsylvania denied the application for *habeas corpus* made by a railway official who had been committed for contempt in refusing to answer questions about rates put by the Interstate Commerce Commission. The court upheld the constitutionality of the act of 1893 requiring witnesses to answer in such cases, but exempting them from prosecution for acts to which they testified (see this QUARTERLY, VIII, pp. 378 and 383). The case was appealed to the supreme court. — Justice Jackson, of the supreme court, died near Nashville, Tennessee, August 8.

STATE ELECTIONS. — Elections for state officers were held in thirteen states on November 5, and were carried by the Republicans in eleven. Mississippi and Virginia alone went Democratic. The Republican majorities were in general exceptionally large, *e.g.*, in New York 97,000, Pennsylvania 162,000, Ohio 96,000, Massachusetts 64,000, New Jersey 25,000. Iowa held to her Republican allegiance, and in Kansas and Nebraska the Populists were again overwhelmingly defeated. But the triumph of the Republicans was most marked in Kentucky and Maryland, where they elected their governors by 8500 and 19,000 respectively. These two states have long been Democratic — the latter for twenty-nine years without a break. In Utah, the question of becoming a state was determined in the affirmative, a constitution was ratified, and the election of officers under the new state constitution resulted in a Republican majority of 1000.

VARIOUS STATE LEGISLATION. — In ~~South Carolina~~ the tension between the state authorities and the national courts has continued to occasion exciting incidents in connection with the execution of the Dispensary Law. The state constables still seize liquor imported from without the state and the United States judges as regularly punish the constables for contempt. The convention to revise the constitution assembled at Columbia September 10, and had not completed its labors at the close of this RECORD. The suffrage clause, as finally adopted November 1, establishes an alternative intelligence and property qualification for voting, and requires either the ability to read and write any section of the constitution or the ownership of \$300 worth of property in the state ; prior to January 1, 1898, however, there is an additional requirement of ability to explain any clause of the constitution to the satisfaction of the election officers. Among the other provisions that had been definitively adopted by November 10 was one explicitly conferring on the legislature power to deal with the liquor question either by prohibition, by the license system or by the dispensary plan already in operation. It was also decided that no divorce

should be granted in the state for any cause, and no recognition of divorces granted by other states. — Two important decisions have been rendered under the Illinois Anti-Trust Law. On June 1 the Cook county court, in the suit instituted by the attorney-general against the Pullman Company (see this *QUARTERLY*, IX, p. 768), held that the company exceeded the powers granted in its charter in only two minor particulars and that its operations in connection with the town of Pullman were incidental to its main purpose. The company's charter, therefore, was not forfeited. On June 13 the supreme court of the state affirmed a decision of the lower court declaring the Distilling and Cattle-Feeding Company (Whiskey Trust) illegal and directing that its affairs be wound up and its property sold. The corporation was already in the hands of a receiver. Under an act of the legislature the expediency of adopting the free land-title system in Chicago was submitted to the people of the state on November 5, and was decided in the affirmative by a majority of 70,000. — Among the acts of the last session of the legislature in New York was one requiring that in the public schools a definite amount of time be given to teaching the effects of alcoholic drinks, tobacco and narcotics, and prescribing a minimum number of pages to be devoted to the subject in text-books of physiology and hygiene. The bill was opposed by leading educators. In August the state court at Buffalo declared unconstitutional the law prohibiting the employment of aliens by contractors on public works. The act was held to be in violation of the treaty by which rights of Italians enjoy the same personal and property rights as citizens. — In connection with the preparations for a great prize-fight the Florida legislature on March 22, passed a stringent act against such contests in the state. Dallas, Texas, was then fixed upon as the site of the fight; but Governor Culberson summoned a special session of the legislature for October 1, and a law was speedily enacted making contests like the one proposed criminal. This action practically rendered the fight impossible within the United States. A supposed discovery by its promoters that the law of Arkansas could be stretched to permit the contest was met by unmistakable preparations on the part of the governor to call out the militia to prevent the undertaking, and the battle was ultimately declared off. — A vote in Rhode Island, in the second week of September, on the question of substituting biennial for annual elections for state officers resulted in the defeat of the proposition, the vote having failed to secure a simple majority, when three-fifths were required. A strong but unsuccessful demonstration of the A. P. A. was made in Massachusetts against the renomination of Governor Greenhalge, the occasion being the participation of the governor in the celebration of a Catholic archbishop's jubilee. At the election in November the question of the expediency of woman suffrage was submitted to the electors and was answered in the negative by a majority of 70,000.

THE RACE PROBLEM. — Some revival of interest in the matter of social equality for the negroes in the North was caused by the enact-

in New York, following recent examples in other states, of a law requiring equal accommodations for all citizens in restaurants, hotels, theaters and public conveyances. More or less systematic attempts were made by negroes in July to "test" the laws, and a number of suits for damages were started; but while some degree of support was given to the statutes by the courts, public opinion was not manifested in their favor, and interest in the subject quickly disappeared. — **Lynchings** in the South have been reported in rather greater numbers than usual. Of twenty-three cases noticed by the compiler, in which the victims were negroes, the crime alleged was rape in fourteen and murder or assault in nine. One of the latter cases was in Maryland, where the victim was under sentence of death, but the mob professed to fear that the governor was about to commute the sentence. Similar ground was taken by a lynching party which hanged two white men at Danville, Illinois, May 25. The offence was rape, and in a colloquy with a judge who was seeking to persuade the mob to disperse, the leaders announced their resolution to make sure that the accused should not be let loose upon the community by a pardon from the governor. An attempt by a mob at Tiffin, Ohio, to take a white murderer from jail and lynch him, October 27, was foiled by armed guards, who killed two of the assailants. A considerable force of militia was promptly sent to the place to preserve order.

MUNICIPAL REFORM. — The central topic under this head has been the enforcement of the saloon **Sunday-closing law in New York City**. Under legislation enacted during the spring the reform mayor of the city, Mr. Strong, effected a complete change in the *personnel* of the police commission, Mr. Theodore Roosevelt becoming president of the new board. On July 1 a reorganization of the police courts and lower judiciary went into effect, and the new system was manned by men in sympathy with the reform administration. The police commissioners had previously announced their resolution to enforce strictly the Sunday-closing law, which was notoriously either a dead letter or a mere instrument for blackmail in the hands of the police. On Sunday, June 23, the new policy was put into operation, amid protests from the German element of the population, apathy on the part of the police officers, and a widespread belief that the experiment would be no more successful than spasmodic enterprises of the same sort that had been undertaken before from sordid motives. The energy and activity of the commissioners, however, soon awoke the rank and file of the police force to a realization that they must do their duty; the coöperation of the new magistrates resulted in ever-increasing penalties on violators of the law; and each succeeding Sunday showed the rigor of the enforcement to be greater. Various attempts by the liquor-sellers to escape through legal technicalities the full force of the attack upon them were thwarted, and at last, on August 23, their organization, which controlled a large proportion of the saloons of the city, came to a formal agreement with the authorities to abandon the practice of Sunday opening and to aid in

enforcing the law against non-members of their association. The work of the New York police attracted great attention throughout the country, and stimulated activity on similar lines in cities from the Atlantic to the Pacific. Another result was an ardent and widespread discussion of the proper Sunday-closing laws, and of the liquor question in general. In New York State the political parties gave the matter an important place in their platforms. The police commissioners themselves studiously refrained from taking sides as to the policy of the existing law, and confined themselves to the simple ground that it was their duty to enforce what the legislature had enacted. In the November elections the city was carried by the Tammany Democrats by 25,000, and the Germans who were alienated from the Republicans by the Sunday-closing policy contributed much to this result.

II. FOREIGN NATIONS.

TURKEY AND THE ARMENIAN QUESTION.— Throughout the period under review the internal condition of the Ottoman Empire and the Porte's relations to the European powers have been conspicuous topics of discussion. Most prominent were the questions raised by the massacre of Armenians mentioned in the last RECORD. Stimulated apparently by the general indignation which this massacre aroused in Christian Europe, Great Britain, France and Russia undertook in May by joint action to bring about the administrative reforms to which the Porte was pledged by the treaties of Paris and Berlin (1856 and 1878). On May 11 the three powers presented to the Turkish government a memorandum and a schedule of reforms for Armenia, and demanded the immediate acceptance of the same. The memorandum called for the appointment at once of a commission approved by the powers, to whom supreme authority over the Armenian provinces should be entrusted, both in superintending the present administration and in carrying into effect the proposed reforms. By his appointment should be an assistant commissioner, who should be Christian or Mussulman as the superior was Mussulman or Christian. It was provided further that the appointment of *valis*, or provincial governors, should be subject to the approval of the powers, that the administrative divisions of the province should be rearranged with some reference to race, and that a committee of three Mohammedans and three Christians should sit permanently at Constantinople to preside in last instance over the execution of the reforms. The memorandum of the powers required also amnesty for Armenians charged with political offenses, the return of Armenian emigrants or exiles, reparation for the losses suffered by the victims of the late massacre in the Sassun region. The more elaborate scheme of reforms provided for a very far-reaching reorganization of the provincial administration on the basis of the system worked out by the committee appointed for the purpose by the Berlin Treaty. The project has been described as aiming to introduce "local self-government worked by a system of Christian and Mussul-

checks and counter-checks." The Turkish government assumed a temporizing attitude on the whole subject, objecting strongly to those features of the powers' demands which looked to a permanent foreign control in Armenian administration. A change of ministers, June 8, which made Said Pasha Grand Vizier in place of Djevad Pasha, brought no change of attitude. Late in July it was rumored that the diplomatic pressure upon the Porte had been greatly increased through the policy of Lord Salisbury upon his accession to power in England. About August 1 Shakir Pasha was appointed commissioner for the Armenian provinces, but with authority far less than what the memorandum of the powers called for. On the 8th the Porte's final reply to the scheme of reforms was delivered, and it amounted to a definite rejection of the scheme, as derogating from the sovereignty of the Sultan. About this time a large British fleet left Alexandria and moved gradually northward along the coast of Syria. During this month it was reported that differences had arisen among the three powers, and the Porte made a formal protest to Russia and France against the attitude of Great Britain, describing it as "discourteous and derogatory to the Sultan's prestige." In September the Porte offered to accept a scheme of Armenian reform much less radical than the project of May 11. Meanwhile the British fleet had reached Salonica, and on September 28 a force of seventeen vessels anchored at the island of Lemnos, near the mouth of the Dardanelles. During all this time Armenian agitators had been more or less active in different parts of the Ottoman Empire, as well as in foreign lands, seeking to rouse a sentiment against the Turks. On September 30 a large band of Armenians in Constantinople undertook, against the urgent commands of their Patriarch, to go to the Sultan's palace to ask for redress of their grievances. They quickly came in conflict with the police, and a fight ensued in which a number of lives were lost on both sides. This incident precipitated further fighting during the following days, and the Softas and other fanatical Mohammedans harried the Armenians throughout the city. The conflict spread to other parts of the empire, very serious slaughter of the Armenians being reported from Trebizond and several Syrian towns. These disturbances were made the basis of fresh representations by the powers as to the necessity of prompt action on the Armenian reforms. On October 4 Kiamil Pasha succeeded Said as Grand Vizier, and on the 17th the Sultan issued a decree approving the scheme of the powers, with some slight modifications. This action was promptly followed by more serious and widespread disorder than had prevailed before. The extreme Mohammedans were incensed because advantages had been won by the Christians, and the extreme Armenians scoffed at the reforms as inadequate. At Constantinople a "Young Turkey" party, devoted to constitutional government for the whole empire, started a revolutionary propaganda, and seem to have been concerned in an unsuccessful palace plot to dethrone the Sultan. In Asia Minor, and particularly in the region of Armenia, conflicts

between Turks and Armenians were reported from almost every province in some cases the latter were so clearly the aggressors, that a counter-movement under direction of their secret revolutionary organization was thought to be under way. But whatever the origin of the disturbances, the first of November the reports indicated that Moslem ferocity triumphed, and that a general slaughter of Armenians was in progress. Once more the Christian powers acted at Constantinople, Germany, and Italy joining with the three that had acted before. On November 9 the ambassadors of the six powers separately, but in substantially identical terms, demanded of the Porte the immediate adoption of measures adapted to restore order. In the face of this demand fresh evidence of difficulty to the council of the Sultan was given by another change of advisers, Rifat Pasha becoming Grand Vizier. The reserves were called upon to assist the regular army in restoring order, but the general attitude of the Porte toward the powers was that of resentment and evasion, and at the end of this RECORD a general movement of French, Italian and Austrian fleets to join the British at the Dardanelles was in progress. On November 9 Lord Salisbury, in a speech at the Guildhall in London, announced that the six powers were perfectly harmonious both as to the policy pursued at Constantinople and as to the means for enforcing it. — More closely related to the Armenian question was the agitation in Macedonia which developed in June, and which gave rise in that and the following month to some rather serious conflicts between the Turkish troops and small bands of insurgents along the Bulgarian frontier. The basis of the trouble was the demand for rights and privileges for the Christians in Macedonia equal to those which were being secured for the Armenians. Russophil societies in Bulgaria were at the bottom of the movement, and were supposed to be working with a view to promoting Russian interference in Bulgaria, should the Turks adopt strong measures to quell the disturbances. The Bulgarian government was somewhat sternly reminded by the powers of the necessity of suppressing the agitation.

GREAT BRITAIN AND IRELAND. — The fall of the Rosebery ministry followed an adverse vote in the Commons June 21. For more than a week previous the position of the ministry had been manifestly precarious. Its very slender majority was still waning through the result of by-elections. On the 14th of June it had been forced by the defection of its Irish allies to abandon a project for a statue of Cromwell at Dublin, and reports having some foundation, to the effect that Mr. Gladstone was not in full sympathy with the Welsh disestablishment policy, had contributed to the demoralization of the party. The decisive vote was cast on a motion to reduce the salary of the secretary of state for war, on the ground that the reserve ammunition for the army had not been adequately maintained. The motion was carried by 132 to 125, and the secretary thereupon resigned. Two days later, June 23, the whole cabinet followed his example, and Lord Salisbury undertook the formation of a ministry.

the understanding that the routine business of the session should be concluded and Parliament then dissolved. **Lord Salisbury's ministry** was constituted on the basis of a formal coalition between the Conservatives and the Liberal Unionists. The leading positions were filled as follows: Foreign Affairs, Lord Salisbury; President of the Council, the Duke of Devonshire; Chancellor of the Exchequer, Sir Michael Hicks-Beach; Home Department, Sir Matthew White Ridley; the Colonies, Mr. Joseph Chamberlain; First Lord of the Admiralty, Mr. Goschen; First Lord of the Treasury, Mr. A. J. Balfour; Lord Lieutenant of Ireland, Earl Cadogan. Parliament was prorogued July 6, and was dissolved two days later. **The general election** began July 13 and resulted in an overwhelming defeat for the Liberals. As finally made up in the first week of August the parties in the new House of Commons stood as follows: Conservatives, 340; Liberal Unionists, 71; Liberals, 177; Anti-Parnellites, 70; Parnellites, 12. This gave to the Conservatives a clear majority of ten over all, or to the coalition a majority of 152. Particularly conspicuous features of the contest were the defeat of Sir William Vernon-Harcourt at Derby and of Mr. John Morley at Newcastle; the gain of three seats by the Parnellites in Ireland; and the practical obliteration of the Labor Party in Parliament. — The new Parliament assembled August 12. In the House of Commons Mr. William Court Gully was reëlected Speaker without opposition. The Queen's Speech contained earnest reference to the Armenian troubles and to the massacres in China, but proposed no business except the appropriations. Upon the completion of supply, September 5, the session closed. — The condition of Ireland has remained exceptionally peaceful. In the ranks of the Nationalist Party, however, personal feuds have been conspicuously present among the leaders, and have paralyzed the party's power. In connection with the election Mr. Healy openly charged his rivals in the party with selling out certain constituencies to the Liberals. The official head of the party, Mr. Justin McCarthy, thereupon issued an open manifesto, August 7, holding Healy responsible for all the dissensions in the ranks, and attributing to his falsehoods and chicanery the loss of financial support from America and Australia and all the misfortunes of the Irish cause. It is admitted on all sides that no progress can be made toward the attainment of the party's ends until concord is restored.

THE BRITISH COLONIES AND INDIA. — In Canada the **Manitoba School Question** has continued to be the central point of political interest. On the 13th of June the Manitoba ministry laid before the legislature at Winnipeg its reply to the Dominion government's order requiring the reëstablishment of the Catholic separate schools (see last RECORD, p. 377). The reply was a firm but respectful refusal to comply with the order, on the grounds that the Catholic separate schools before their abolition had been inefficient, and that it would be financially and administratively impracticable for the province to maintain a good system of primary education on the principle of a separate set of schools for every

religious sect that should demand it. This reply the provincial legislature approved on June 19 by a vote of 25 to 15. Under the constitution it became the duty of the Dominion Parliament to pass the laws necessary to carry out the government's order. But serious political complications once arose in view of such action, and on July 8 the ministry announced its conclusion not to propose remedial legislation till the first Thursday of January, when, if the Manitoba legislature should not have acted, the Dominion Parliament would be asked to deal with the matter. This announcement caused a slight ministerial crisis, and the three members of the cabinet resigned, though two of them were induced to withdraw their resignations. Later in the summer Earl Aberdeen, governor-general, and Sir Mackenzie Bowell, the Dominion prime minister, were in consultation with the Winnipeg authorities, though apparently without effect upon the attitude taken by the latter. — From the *last RECORD*, p. 378) the best financial offer that the latter felt they could make — about \$1,405,000 in debt assumption, subsidies and administrative services — still left a large balance of debt to be carried by the Dominion, which would necessitate taxation heavier than the Newfoundland government would venture to propose to the people. Accordingly the Dominion gave up the idea of union, negotiated a loan in London to settle its debt, and started in on a policy of radical retrenchment. On July 10 the policy met with a check through the refusal of the governor to sign a bill reducing the salaries of all government officers. In the middle of September extensive smuggling practices were unearthed that exposed certain deficiencies in much-needed revenue, and that further seemed to implicate a number of supporters of the Whiteway government. A large number of arrests were made in connection with the matter in October.

Financial policy in New South Wales has attracted great attention to itself and to its wider political results. A series of government measures which included an extreme free-trade tariff, with direct taxes on land and income to compensate for the abolished customs duties, was antagonized and defeated by the Legislative Council, or upper house, after passing the lower. Thus to the tariff and direct-tax issues was added that of the power of an appointed upper house with life tenure to thwart the proposals of the popular representatives. On these questions the Reid ministry appealed to the electors and won a decisive victory, July 24. Bills were promptly brought in at the assembling of the new parliament, August 13, for carrying out the proposed financial policy. But at the end of October the Legislative Council again produced a deadlock by refusing to accept a provisional land-tax bill exempting from the tax land up to the unimproved value of £475. — In Indian affairs the leading question has been as to the restoration of Chitral, the little mountain state lately conquered. The occupation of the kingdom had been undertaken for the purpose of punishing the

hostility and aggression by the ruler, and the Indian government officially declared at the outset that there was no intention to make any permanent conquest. But when the British expedition had triumphed, a demand arose that the position should be held as an important element in the defense of India on the side of the Pamirs. Lord Rosebery's ministry determined, after consideration, to withdraw the troops, but this decision was not made public till July 5, after the change of government. On August 12 it was announced that Lord Salisbury had given orders that Chitral should not be abandoned, but that permanent garrisons should hold it and the road connecting it with India. — The delimitation of the Russian frontier in the Pamirs was completed in the middle of September by the joint commission to whom the work had been entrusted under the recent treaty.

FRANCE — The **financial projects** of the Ribot ministry were set forth in the proposed budget for 1896, which was published in the middle of May. This estimated a deficit of 56,000,000 francs, which it was proposed to meet by remodeled succession duties, by increase in several of the old taxes, and by new taxes on house-servants, horses and carriages. The budget committee, as constituted by the Chamber May 21, was hostile to the government's plans and assumed an attitude which left little prospect of their ultimate adoption. The Chamber adopted in July a bill providing for an extensive rearrangement of the liquor taxes, and establishing a government monopoly of the trade in distilled spirits. The fate of this bill in the Senate is expected to have an important influence on the budget. — The acceptance of Germany's invitation to take part in the ceremonies at Kiel in June (see below, p. 750) was made the basis of attacks on the government by the Radicals. In replying to an interpellation, June 10, M. Hanotaux, the minister for foreign affairs, asserted that the acceptance was merely an act of politeness and signified no change of policy whatever. The August anniversary celebrations of the Germans also caused very bitter comment among all parties and classes in France. — All through the summer the slow progress of the campaign in Madagascar (see below, p. 753) was followed with great interest, and evidences of inadequate arrangements for taking care of the fever-stricken soldiers were the basis of severe attacks on the war ministry in even the more reputable newspapers. — The tariff war between France and Switzerland, which had resulted in very serious detriment to French commerce, was terminated by a compromise, June 25, in which France gave way to Switzerland's demand that some thirty articles of Swiss production should be admitted at rates below the minimum tariff. — **A cabinet crisis** followed closely upon the reassembling of the chambers, October 22. Dissensions and recriminations among the ministers in connection with the Madagascar expedition had seriously weakened the Ribot government, and attacks upon it by the Socialists and Radicals began promptly at the opening of the session. An interpellation by the Socialist Jaurès on the ministry's conduct in connection with a strike at Carmaux failed of decisive results. But on October 28 a motion of M. Rouanet,

practically censuring the government for shielding politicians who were charged with complicity in corrupt operations of a railway syndicate, was carried, 310 to 211. A Radical cabinet was then formed under the leadership of M. Bourgeois, with Berthelot for foreign affairs, Cavaignac for the interior, and Lockroy for the marine. On November 4 M. Bourgeois formally outlined his policy to the Chamber. He promised a thorough investigation of the Southern Railway scandal, an earnest effort to pass the budget and bills for a progressive succession tax, a general income tax, old-age insurance, workingmen's pensions and a definitive settlement of the relations of state and church.

GERMANY. — The Reichstag was prorogued May 24, without having accomplished much besides routine business. The Prussian Landtag continued throughout its session to manifest on every occasion the hostility of the Agrarian Conservative majority to the government. Finance-Minister Miquel's taxation bills were seriously altered in this way. Both houses of the Landtag in May passed urgent resolutions calling upon the government to take steps looking toward international bimetallism. It was announced in June that the imperial government's inquiry among the various European governments had elicited opinions that rendered the calling of a monetary conference improbable. — On June 20 the new ship canal connecting the Baltic with the North Sea was formally opened with elaborate ceremonies. In response to invitations from the emperor a large fleet of war vessels from many nations, including Russia and even France, assembled at Kiel and took part in the festivities. — Throughout August all Germany was occupied in celebrating the twenty-fifth anniversary of the victories at the close of the Franco-Prussian War, the festivities culminating with the "golden days" at the beginning of September. A discordant note in the general jubilation was the ostentatious refusal of the Socialists to take part in the celebrations; this attitude on their part drew upon them sharp reproaches from the emperor. The latter was most energetic in heading celebrations, especially in the various divisions of the army; and both in a speech at a state banquet on September 2, and in a general rescript of thanks issued a little later, he used strong expressions against the Socialists, whom he referred to as "unpatriotic enemies of the divine system of order in the world." — The Socialist Congress, which was held at Breslau October 7-12, revealed in general a high degree of union in the party, and a lack of any elements which would point to a weakening of its forces in the near future.

AUSTRIA-HUNGARY. — The fall of the Windischgrätz ministry occurred June 18, in consequence of a vote of the lower house of the Reichsrath appropriating money for the teaching of the Slovene language in the high school at Cilli, in Styria. This vote caused the formal withdrawal of the German Liberals from the coalition on which the cabinet was founded. Other questions had already caused much friction between the ministerial parties, and the fall of the cabinet had been probable for some time. Its tax-reform bills had occasioned some discontent, which

become very pronounced upon the publication of its Electoral Reform Bill, June 4. This bill, like the first formulated by this ministry (see this RECORD for June, 1894, p. 370), provided for a fifth electoral *curia* for the workingmen, but extended the franchise to others than contributors to workingmen's insurance funds, and arranged details so as to favor the Conservatives and Poles rather more than the German Liberals in the distribution of the forty-seven new seats in the Reichsrath. After the retirement of Prince Windischgrätz the routine business of the summer was carried on by a temporary non-partisan cabinet, under the presidency of Count Kilmansegg. At the beginning of October a permanent ministry under Count Badeni assumed the conduct of affairs, resting for support mainly on the Polish party in the legislature, though claiming to be free from party affiliations. Count Badeni's declaration at the meeting of the Reichsrath, October 22, promised a new electoral bill and the necessary steps for renewing the constitutional adjustment between Austria and Hungary, which will soon expire. — The strength of the Anti-Semitic party in the municipal council and among the populace of Vienna gave rise at the end of May to considerable disturbances, on the occasion of the election of a burgomaster by the council. Dr. Lueger, a leading Anti-Semite, was elected, but declined to serve. Disorderly scenes within and without the council chamber led the ministry to dissolve the council and entrust the government of the city to a commissioner, assisted by an advisory committee. New elections in September resulted in the attainment of a two-thirds majority in the council by the Anti-Semites. The Clericals in Vienna supported the Anti-Semites, as a protest against the government's anti-clerical policy in Hungary. The Anti-Semitic leader has publicly denounced the Hungarian government as controlled by Jews. Dr. Lueger was again elected burgomaster by the new council, but the emperor refused, November 7, to approve the choice. — The Liberals in Hungary manifested great delight over the fall of Count Kalnoky (see last RECORD), regarding it as an evidence of imperial favor for their ecclesiastical policy. At the beginning of July the ordinances were issued for putting into operation the new civil-marriage and civil-registry laws. In conducting the civil-marriage ceremony and civil birth registry the administrative officials were instructed formally to notify the parties concerned that their duties to the church were not yet fulfilled. The Magyar language alone is allowed in the proceedings. The laws went into force October 1, with only some slight disturbances in a few rural districts, where the peasantry were incited by the priests to violence against the officials. On September 30 the lower house of the Diet at Pest adopted a compromise with the Magnates on the two remaining ecclesiastical bills, and the legislation was finally completed. — A change in the official title of the chief minister of the dual monarchy was recently made, by which his full designation became: Minister for Foreign Affairs and of the Imperial and Royal House. The change consisted in the insertion of the words "and Royal," which was

understood to be a particular recognition of Hungary's equal position in the realm.

ITALY. — The general election, which began May 26, resulted in a great victory for the government. In the parliament that assembled Signor Crispi's supporters numbered 366 and the combined opposition only 155. Of the various opposition parties only the Socialists made any headway in the elections. With its majority well in hand the ministry proceeded through successfully the routine work of the session. The financial situation was shown to have greatly improved, and the prospect of an equilibrium in the budget seemed more real than for some time in the past. The proceedings instituted by Premier Crispi against Giolitti in the Chamber (last RECORD) were checked by a decision that the controversy was outside the jurisdiction of the Chamber. Charges of personal corruption against Crispi by Cavalotti, a Radical leader, also failed to gain a hearing in court. — In the middle of September began the celebration of the fifth anniversary of the events that culminated in the occupation of Rome by the national army. Monuments to Garibaldi, Cavour and Victor Emmanuel were dedicated, as was a pillar to mark the point where the city wall was breached for the entry of Victor Emmanuel's troops. Incidental to these festivities the king proclaimed either full amnesty or a reduction of punishment for all the prisoners who were undergoing punishment for participation in the disturbances of a year ago in Sicily and Massa Carrara. The king assumed an attitude of formal protest against this whole celebration, and had earlier renewed the prohibition upon the faithful against taking part in the elections. — A further unpleasantness in connection with the king was caused by the projected visit of King Carlos of Portugal to Rome. The pope announced that if the king visited King Humbert, the papal nuncio would be withdrawn from Portugal. Alleging the internal complications that this would cause, King Carlos abandoned his project, whereupon the Italian government withdrew its minister from Lisbon, and thus severed diplomatic relations October 20.

MINOR EUROPEAN STATES. — The tension between Norway and Sweden, which was very threatening at the beginning of this RECORD, was relieved somewhat by a compromise resolution passed in the Norwegian Storting June 7. This involved an understanding, on the one hand, that a ministry should be appointed which should harmonize with the views of the chief parties in the Storting, and on the other, that this ministry should undertake to settle the difficulties with Sweden by negotiation. It was agreed that the basis of the negotiation should include, on the one hand, the maintenance of the union between the kingdoms, and on the other, the establishment of a separate consular system and foreign ministry for Norway. This whole project was opposed by the extreme Radicals as involving too much, but it passed the Storting by 90 to 24, the moderate Left acting with the Conservatives to form the majority. A further step in the line of compromise was the adoption of the budget by the Storting.

including the diplomatic and consular appropriation which a year before had been voted on a condition which the king did not accept. The formation of a ministry in accordance with the plan of compromise was not effected till October 14, when a coalition cabinet, headed by Hagerup, was announced, in which the Conservatives, the Radicals and the Moderates were all represented. In September the Swedish government gave the necessary two years' notice of the termination of the treaty of navigation and commerce between the kingdoms, and thus raised a new set of questions to be treated in the forthcoming negotiations. — In **Belgium** the chief matters of interest during the legislative season were the protective tariff and the new school law which the clerical majority forced through. The latter project made religious instruction compulsory in the primary schools, and in general extended the influence of the ecclesiastical organization in public education. A bitter and demonstrative, but unavailing, opposition to the project was made by the Radicals and the Socialists. — A lurid light was thrown on the passions underlying **Bulgarian politics** by the assassination of M. Stamboloff, July 15, in the streets of Sofia. The ex-premier was literally hacked to pieces by the knives of the murderers, though he did not die till the 18th. A strong tendency was manifested by the European press to hold Prince Ferdinand, who at the time was in Carlsbad, morally responsible for the hideous deed. The funeral of the murdered statesman was attended by some disturbances created by his implacable adversaries. The assassins have not yet been brought to justice. The pro-Russian, and therefore anti-Turkish, policy of the government has been made clear in various ways. The Macedonian agitation (see *ante*, p. 746) is said to have been connived at by the Bulgarian government. A deputation headed by the Bulgarian Metropolitan, Clement, visited St. Petersburg in July to lay a wreath on the tomb of the late czar, and incidentally to do what they could to secure the recognition of Prince Ferdinand by the Russian government. The Metropolitan claimed that great results had been attained by the deputation, but a semi-official statement was issued in St. Petersburg, August 1, declaring that the czar would never recognize Prince Ferdinand. It was reported in October that the ministry had urged the prince to have his infant son Boris baptized in the orthodox faith, to make him more acceptable to Russia. The address to the Sobranje, October 31, did not contain the expected announcement of this ceremony, though it abounded in friendly references to Russia. — A change of ministry in **Servia** in July, through which the Progressists, represented by M. Novakovitch, came into power, was considered to foreshadow an approaching reconciliation between the king and the Radicals, and the transfer of power to the latter, who have in their ranks an undoubted majority of the Servian people.

AFRICA. — The French conquest of **Madagascar** was completed by the occupation of the Hova capital, Antananarivo, September 27. General Duchesne's expedition spent almost six months in covering the 370 miles between the coast and the capital. The military resistance of the Hovas

was of the slightest: the lack of roads in a very difficult country, the deadly climate of the lowlands, were the chief causes of the deaths. Though serious charges of mismanagement in respect to supplies and hospital service were brought against the ministry of war. Upon occupation of the capital the queen accepted by treaty the full protectorate of the French. — On the ground that the king of Ashanti, continuing the practice of human sacrifices, was violating a treaty, British government demanded that a British protectorate should be recognized. On the refusal of the king to agree to this, at the end of October an expedition was prepared to go to the capital, Coomassie, and enforce the demand. — In July a German fleet, appearing at Tangiers, exacted from the government of Morocco reparation for the murder of German subjects by the natives. The French press manifested some resentment at Germany's proceedings in this affair. — From the Congo State came a report in June of an important victory over the Mahdists in the equatorial region. The execution of a British trader and ex-missionary named Stokes by an officer of the Congo State, on the charge of selling arms and ammunition to the natives, caused much criticism in Great Britain. It was claimed that the proceedings in the case were very irregular, and the evidence insufficient. — The Italian government has announced its resolute purpose to maintain and strengthen its position in Abyssinia. The announcement was prompted by a Russian mission to King Menelik in June for the alleged purpose of "bringing the Russian and Abyssinian churches closer together." It was reported on the 21st of October that King Menelik had been killed by lightning. At the end of the RECORD the Italian General Baratieri was engaged in operations that seemed likely to involve the conquest of the whole of Abyssinia.

THE ORIENT. — The final adjustments following the conclusion of war with Japan have brought interesting developments as to the relations between **China and Russia**. In connection with the payment of the first installment of the war indemnity to Japan (the total was \$160,000,000) China issued a loan of \$77,200,000, of which the Russian government undertook a formal guarantee. The money was obtained, however, through French bankers, and the interest is secured by the Chinese customs duties. The terms of the undertaking were officially announced by a Russian imperial ukase of July 7, but the affair had been widely known and discussed before, and much speculation had been indulged in by the press as to the motives of Russia's action. In Japan a very strong anti-Russian feeling has been manifested in various ways. Just at the close of the RECORD it was announced that a treaty had been concluded between Japan and China, in which the latter agreed to pay an additional indemnity of 30,000,000 taels, upon receipt of which the former should fulfil her agreement to evacuate the Liao-Tung peninsula. A report from Hongkong the last week of October that China had conceded to Russia the use of Port Arthur as a naval station and the right to connect the place by a

with Siberia, gave rise to very earnest protests in the British press against the aspirations of Russia on the Pacific coast. The continental press in general expressed satisfaction at the apparent advantage that Russia had obtained over Great Britain and at the diplomatic isolation of the latter. The report was later officially declared baseless. — A fresh series of **outrages on missionaries in China** began in May and continued through the summer. The regions especially concerned were the provinces of Szechuen and Tokien. Beginning with the looting and burning of an American station at Chengtu in May, the disturbances culminated in the slaughter of nearly a dozen British subjects at Kucheng on the first of August. The imperial authorities at Peking professed entire readiness to ferret out and punish the perpetrators of the deeds, but the conduct of the local officials indicated indifference to the outrages, if not actual connivance therein. At the end of September the British government peremptorily demanded of China the prompt and public degradation of the viceroy of Szechuen and his subordinates for failing to protect the missionaries, accompanying the demand with a naval demonstration on the Yang-Tse-Kiang. The Chinese government at once complied with the terms of the ultimatum. A large number of persons have been executed for complicity in the Kucheng massacre, and a commission of American officials is engaged in an investigation of the earlier but less serious affair at Chengtu.

LATIN AMERICA. — **The Cuban insurrection** has assumed very serious proportions during the six months under review. Despite the vigilance of the Spanish cruisers and of the American authorities, considerable supplies of men and munitions seem to have made their way from the United States to the rebels, and many recruits have been gained from the population of the island. While the important towns of the coast and inland have been retained by the Spanish troops, the country regions of the interior seem to have been overrun by the insurgents, moving from the east westward, throughout fully two-thirds of the island. General Martinez Campos has found himself obliged to make heavy demands on the home government for reënforcements, but the responses have indicated a resolution to subdue the insurgents at any outlay of money and men. By the end of August the Spanish forces in the island amounted to 80,000 men, and more were promised in case of necessity. The fighting during the summer was of a desultory character, the insurgents generally avoiding set battles, but keeping up guerrilla practices. On May 20 one of the principal leaders of the insurgents, José Martí, was killed in a skirmish. In midsummer the insurgents announced the organization of a provisional government, which was succeeded, September 22, by a permanent republican government, with Salvador Cisneros, formerly Marquis de Santa Lucia, as president. The seat of government was Najasa. In October it was announced at Madrid that Martinez Campos would begin in November a general systematic movement to crush the rebellion. The whole island will then be surrounded by a cordon of war ships, and the land forces, in a

line extending across the island, will move eastward, sweeping before it into their fastnesses in the mountains of the eastern where they will be hemmed in and finally disposed of.—Renewed was attracted to the boundary dispute between Great Britain and Venezuela by the statement in the English press, October 19, that the government had sent an ultimatum to Venezuela demanding repayment of the arrest of British officers last January at Uruan, a point of territory in dispute, and declaring what terms would be granted in settlement of the boundary question.—The discovery in July that Great Britain had formally occupied, as a cable station, the little desert island of Trinidad, 500 miles off the coast of Brazil, gave rise to a strong feeling in the latter country and led to a diplomatic correspondence in which the proprietary claims of Brazil to the island were asserted.—General and Ex-President Floriano Peixoto died June 29.—The Central American confederation was taken up anew at a conference at Amapala, Honduras, about June 20. It had been designed for the presidents of all five of the republics present, but only three, namely, Gutierrez of Salvador, Bonilla of Honduras, and Zelaya of Nicaragua. The consultation of the three resulted in a scheme of a confederation, in which a central diet is to have charge of foreign relations and of differences among the component states. The scheme is subject to ratification by the legislatures of the states concerned, and is arranged with reference to the entrance of Guatemala and Costa Rica also into the confederation.

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[Number 3

- The Gold Standard in Recent Theory* . . . Prof. J. B. CLARK
Ideal of the American Commonwealth . . . Prof. J. W. BURGESS
Germany and the Political Constitution . . . PAUL L. FORD
The Tennis Court Oath . . . Prof. J. H. ROBINSON
The Study of Statistics . . . Prof. R. MAYO-SMITH
Labor and Politics in England . . . Prof. JAMES MAYOR

Reviews : Flach's *Origines de l'Ancienne France* — Cunningham and McArthur's
Outlines of English Industrial History — Von Spemann's *Sozialpolitischen
 Ideen* — Alexander Herzen — Lerassier's *Agriculture aux Etats Unis* —
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CONTENTS OF THE LAST TWO NUMBERS

March, 1895

Municipal Home Rule	Prof. F. J. M.
Workmen's Dwellings in London	EDWARD
The Law of Population Related	Prof. S. J. M.
Legislation against Intemperance	E. J. M.
Chicago's Electric Lighting Plant	W. J. M.
Germany and the Revolutionist	Prof. J. M.
Anglo-Saxon Courts of Law	FRANK
Book Notes	E. J. M.

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The Modern Use of Injunctions	F. J. M.
Static and Dynamic Sociology	EDWARD
Central and State Income Taxes	Prof. L. P. A.
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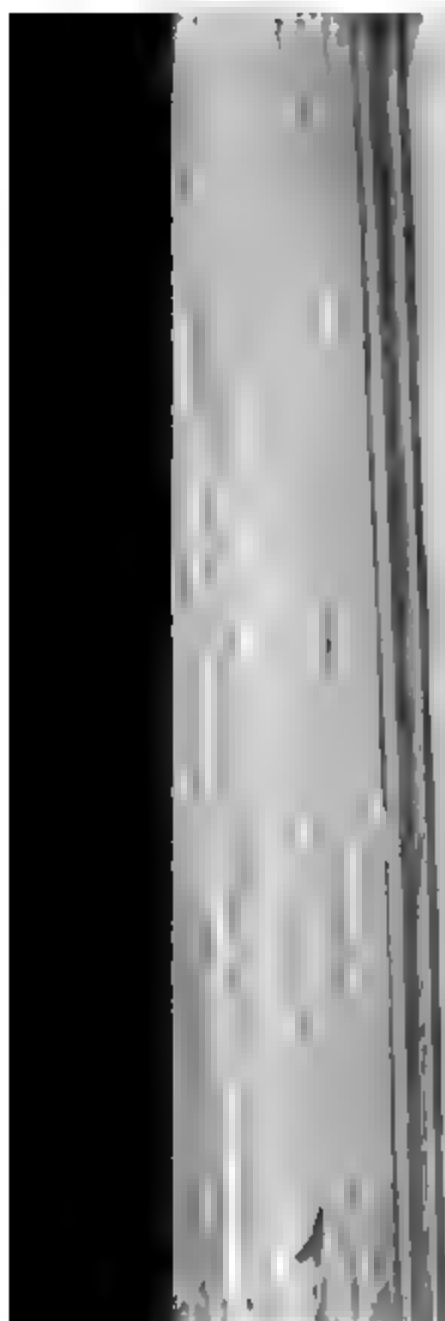
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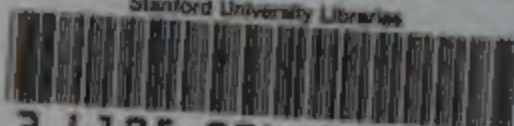
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